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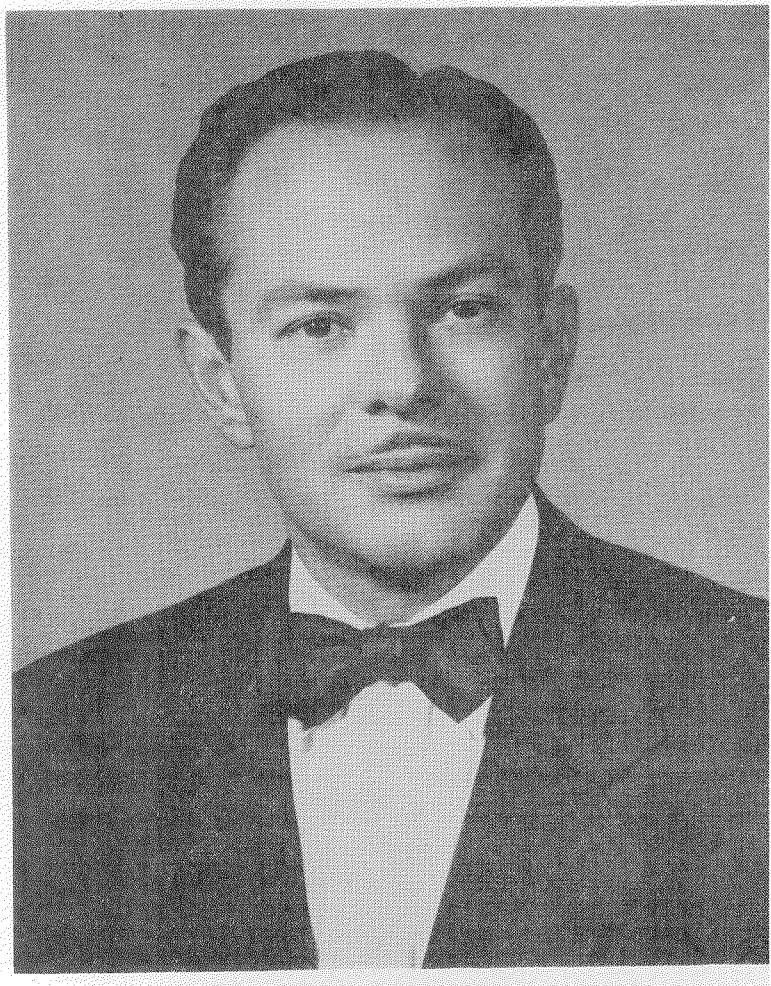
Proceedings of the Nebraska State Bar Association Annual Meeting, 1953

Laurens Williams
Nebraska State Bar Association



PRESIDENT LAURENS WILLIAMS

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NEBRASKA STATE BAR ASSOCIATION
ANNUAL MEETING

November 12, 1953

The Fifty-Fourth Annual Meeting of the Nebraska State Bar Association, convening in Hotel Paxton, Omaha, Nebraska, was called to order at nine-forty o'clock by President Laurens Williams of Omaha.

PRESIDENT WILLIAMS: The Fifty-Fourth annual meeting of the Nebraska State Bar Association is convened.

Will you kindly stand while the invocation is delivered by The Reverend Harold T. Janes, D.D., Minister of the First Central Congregational Church of Omaha.

INVOCATION

REVEREND HAROLD T. JANES: Let us pray.

Eternal God, we thank Thee that Thou hast created an orderly and dependable world and hast granted unto Thy human children the ability to discern the laws with which Thou dost govern the universe, and the desire to live in accordance with them. We thank Thee for the Constitution of the United States and for all the laws of our land which support that Constitution and make it an instrument for the protection of freedom, the defense of the weak, and the extension of democracy. Save us from those who would violate these laws for selfish gain or advantage, and grant that America may continue to be a refuge for the freedom loving peoples of the world.

Bestow Thy special blessing upon this company of men and women who have devoted themselves to the interpretation and enforcement of the law. In the midst of all the pressures which surround their vocation, help them to listen to Thy voice and give obedience to Thy will. May they continue to bring honor to their profession and strength to this nation which we all love by continuing to do justice, to love kindness, and to walk humbly with Thee, our God. Amen.

(The audience then was seated.)

PRESIDENT WILLIAMS: The President of the Omaha Bar Association, the Honorable William W. Wenstrand, to whom this Association is deeply indebted for his remarkable cooperation and assistance throughout the year, will make the address of welcome. Mr. Wenstrand!

ADDRESS OF WELCOME

WILLIAM W. WENSTRAND: Your Excellency, Mr. President, Fellow Lawyers, Ladies and Gentlemen: On behalf of the Omaha Bar Association and the citizens of Omaha, it is my privilege to welcome to Omaha the assembly of the Nebraska State Bar Association.

Since we are all Nebraskans, we have a common understanding that binds us together as lawyers and as men and women interested in the progress of our great commonwealth.

The Omaha Bar Association is one of the oldest Bar Associations in America. It was organized in 1879. It has furnished two Presidents of the American Bar Association. It has always extolled the virtues of the profession. But it is especially noted for its hospitality.

It is signally honored this year to have from its membership two officers of the State Bar Association, your President and one of your Vice-Presidents.

The members of the Omaha Bar Association and their wives have made extra effort this year to provide for your entertainment and that of your ladies. Our Hospitality Committees have been organized to make sure that each of you and your ladies is properly taken care of. It is always a pleasure to be a host to our fellow Nebraskans, and especially our fellow lawyers. It is a great honor to our profession that our Governor is one of us and that he is present at this meeting.

We trust that you may enjoy the sessions, and that we may by our actions be able to convey to you the feeling that you are indeed welcome and that we are honored by your presence.

PRESIDENT WILLIAMS: The Honorable Robert B. Crosby, a member of this Association, Governor of the State of Nebraska, will respond. Governor Crosby!

RESPONSE

HONORABLE ROBERT B. CROSBY: Thank you, President Williams. Members of the Nebraska State Bar Association: It is a pleasant change for me to be in the role of making a response instead of making a welcome, as usually I have to do.

I recall that a year ago about this time I talked to you, and a good deal has happened in the interim. I have had a chance to observe the legal profession from the vantage point—if you can call it a vantage point—of being Governor. I want to say to you very sincerely that my regard for the legal profession and for the fabric of laws and the constitution that we have, has grown in the last ten months.

One of my observations is that the legal profession performs, almost alone so far as the group is concerned, the role of protecting the interest of individuals and minorities in a society like ours.

Just within the week my attention was called to the report of one of your committees, the Committee on Administrative Agencies, headed by Mr. Chauncey Barney of Lincoln. That report dealt with the problem of giving individuals their full rights as they come up against the regulatory power of administrative agencies of the state and federal government. Incidentally, that committee, according to the press, called for a meeting with the cooperation of the Governor, a meeting with the heads of the various executive agencies of the state government which have rule-making power and I confess that most of them do, I have discovered. I am happy to tell you this morn-

ing that as Governor I am going to be anxious to cooperate with your committee, headed by Mr. Chauncey Barney—I haven't had a chance to talk with him yet because his report was noted in the newspapers only a few days ago—happy to cooperate with him and call in the heads of my administrative agencies in state government to meet with a committee of the Bar Association to try to work out standard procedure so that lawyers will know how to go about the matter of protecting the rights of their client, an individual, and so that there won't be any hasty administrative rule-making that will deprive people of valuable rights without their having had a fair chance to be heard.

By the way, this matter of protecting individuals brings to my mind one of the very sharply etched contemporary examples of the way in which our system of laws protect an individual. I confess that this example is one that has impinged on my political comfort considerably. I hope that each of you has appreciated the full significance of this aspect of what I am going to discuss.

At this point the Governor spoke in detail of the case of Laflin v. State Board of Equalization and Assessment, 156 Neb. 437, and concluded by saying:

It is a reassuring thing that we have courts in Nebraska that will require the enforcement of a constitution and a state law, regardless of the fact that politically elected officials would regard it as inexpedient from the point of view of being successful at elections. It is a reassuring and inspiring story. And among the men in Nebraska whom I admire greatly, and I know him hardly at all, is Mr. Lewis Laflin, citizen of Nebraska, who compelled the enforcement of his rights under the constitution.

So you see, your role is a great one as lawyers. You do that kind of thing on a smaller scale from day to day. I am proud to be a lawyer. I am as proud to be a lawyer, altogether as proud as to be a Governor. Thank you.

PRESIDENT WILLIAMS: Thank you, Governor Crosby.

PRESIDENT'S ADDRESS

LAURENS WILLIAMS: Ladies and Gentlemen: Because the rules of court require it, at this time there is scheduled a President's Address. Because, however, there are twenty-one committee reports which must be presented and acted upon before twelve o'clock, the President's Address will be simply a report concerning several of the occurrences in the affairs of your Association during the past year.

This has not been a year of brilliant achievement in the affairs of this Association, in my view. Our Association has produced very little demonstrable improvement in the matter of speedy administraton of justice in Nebraska, in the caliber and efficiency of our judiciary, in the social or economic status of the bench or the bar, or in the area

of the prestige of the bench and the bar. This has not been a year of reaping and harvesting. Rather, I hope and believe, it has been a year of plowing and cultivating, of sowing of seed which, if properly nurtured, may be ready for harvest in some later year.

During this year we have sought to lay the foundations for long range, continuous, durable programs for the betterment—the constant betterment—of this Association, of our services to our fellow men, to our state, and to our nation; and incidentally, of our own status.

Two major things have occurred. First is the matter of the increase in annual dues, the matter of money. As you know we had been operating at a level of activity which was producing an annual deficit in our budget. Even at the old level of operations, with a program of activities which all of us increasingly believed to be inadequate, we found ourselves without money enough to pay for the things which we were doing. So about a year ago we started considering that problem. First there was appointed an enlarged Committee on Budget and Finance. Its report is in the advance program. I confess to you that that committee was carefully hand picked. It consisted of twenty-four lawyers who, geographically, economically, and professionally, typically represented the entire bar of this state. After an exhaustive survey each of you received a letter from that committee in which it outlined its findings and its recommendations.

Then, by an odd coincidence, about two days later you received a comprehensive letter from the Committee on Public Relations—which I also say to you frankly was carefully selected in order that it might be truly representative of the entire bar of this state—outlining to you in considerable detail, with much documentation, its findings and recommendations in the area of an enlarged program for public service for this Association.

Then, strangely enough, about two days later you received a ballot in a referendum. But during the intervening two or three days you received something further. You received telephone calls and personal letters from a large number of our members who had interested themselves in and had volunteered to help this program. Because of time limitations, I will not detail precisely those recommendations and all that happened, but for the record will hand to our reporter the documents which were disseminated and ask that they be included in the printed record of these proceedings.

That referendum was as gratifying to the officers and Council of this Association as anything that happened during this year. Out of approximately 2,150 active members of this Association—of whom at least five hundred or more are not really engaged in the active practice of law but whom we are delighted to have as members since they are members of the bar, though employed in other lines or work—out of that many we received 1,526 ballots. I suggest that there were not over

one hundred or one hundred fifty active practicing lawyers in this state who did not vote in that referendum.

A canvassing Board was appointed composed of the Honorable Sterling F. Mutz of Lincoln, Chairman, the Attorney General of Nebraska, Mr. Beck, and the Assistant Attorney General, Mr. Nelson. They certified to us that of 1,526 ballots cast, 1,011 voted for the proposal, and only 515 against, a margin of almost two to one, under which *you* voted to double your dues; to increase the dues of active members from $10.00 per annum to $20.00 per annum; inactive dues, from $2.00 to $5.00 per annum; the dues of active members who have been admitted to practice five years or less, from $5.00 to $10.00 per annum.

The primary, driving motive back of that was the planned installation of a permanent, continuous, year in and year out program of what is sometimes called Public Relations but which, in our view, is better called, more accurately called, a program of Public Service.

What have we bought, what have we contracted to buy? On the mezzanine there are some exhibits, selected publications of other bar associations in America in their public relations programs. We recommend them to you for examination. We had hoped to have available for sale at this meeting what I think is the finest book on the subject which has been published, a manual prepared by the American Bar Association's Committee on Public Relations entitled, "Public Relations for Bar Associations." But the supply is not yet off the press. It is also a book on public relations for the individual practitioner in and about his daily activities. You will be able to procure these, we hope, later in the session, or certainly you can order them. We suggest that it would be a wise investment of a very few dollars.

Then, Friday afternoon, we shall have what I think I can guarantee will be as fine and comprehensive a coverage of the entire subject of public service and public relations of individual lawyers and bar associations as has been put together for presentation at any one time in any one place in America. You know what it is from the printed program. We do hope, and urge, that all of you will attend that meeting. At that time we will formally introduce to you the very fine young man whom you have seen running around at this meeting, whom this Bar Association has employed as its Director of Public Service.

Nobody expects any miracles as a result of this program. We do not expect anything to happen overnight. The job will *never* be done, never be finished, because it must be a permanent, continuous, everlasting job. But we suggest that we should give it two, three, or four years, and then let's look and see. Let's not judge it too quickly.

This, incidentally, will make possible the publication of the Nebraska State Bar Association on a quarterly basis and should make it a valuable, interesting, and worthwhile publication.

The second thing which has happened this year which we hope may be something of a milestone in the history of the Association is the matter of the reorganization of the form of government of the Association. You will recall that commencing in 1949 studies were made of the governmental structure of this Association; that at the 1950 annual meeting the recommendation of the Executive Council, which had adopted the substance of a report of a special committee of the membership for the creation of a House of Delegates and other changes in our structural organization, was adopted after exhaustive consideration on the floor of the assembly. In March of 1951 the Supreme Court was asked to change the Rules under which we are integrated, pursuant to the action taken at the 1950 meeting. That summer the court expressed to the Council its desire that a referendum of the entire active membership be conducted prior to its final action on the application for change in the Rules. Because this Association had voted down a referendum, the Council had no authority to conduct such a referendum. Therefore, at the 1951 annual meeting the matter was again presented to the Association meeting in assembly, and this assembly directed the taking of a referendum on the proposed changes in the rules, with such further additions, changes, etc., as the Executive Council in its judgment should determine were advisable. Studies continued. That referendum, you will recall, was conducted last month.

Again, in order not to waste your time, I shall not repeat the details because each of you received a letter explaining the proposal, in which I blocked out in general what we sought to accomplish by the proposed changes—and then each of you received, with a ballot, a letter from the Executive Council as a part of which the proposed amendments were all set out in detail. I shall simply ask that they, too, be included in the printed record of these proceedings in order that the detail may be in *The Nebraska Law Review* in permanent form.

That referendum called for the return of ballots by November 2, last. On November 3, 1953, a canvassing board consisting of the Honorable Harry R. Ankeny, District Judge of the Third Judicial District, the Honorable Herbert A. Ronin, County Judge of Lancaster County, and Walter D. James, Supreme Court reporter and Reviser of Statutes, counted the ballots—1,034 ballots had been received within the time limitation. The Board certified that 901 members had voted *for* the porposal, and 133 *against*, a margin of approximately seven to one.

Application, accordingly, was filed with the Supreme Court on November 5, 1953, asking for adoption of the amendments to the rules as proposed. Last Saturday, November 7, 1953, the Supreme Court of Nebraska amended the rules exactly as requested by this Association in that referendum.

While there are other changes which are of significance, the primary accomplishment in those amendments to the rules is the creation of a House of Delegates. In a few minutes, we will attempt in something like ninety minutes to hear and act upon twenty-one committee reports. This is the last year we will have to do that because the House of Delegates will have the following powers and duties: "(1) To receive and act upon the reports of all committees of this Association; (2) To receive and act upon the reports of the Sections of the Association; (3) To propose and initiate such policies for the Association as may be deemed advisable and designate appropriate personnel to carry out and make effective such policies; (4) To exercise all of the powers of the Association not otherwise specifically delegated herein, and subject to the action of the members of the Association as herein provided; (5) To report to the annual meeting of the Association a summary of its actions. A referendum of the members on any action taken by the House of Delegates shall be conducted whenever the House of Delegates or the Executive Council shall so direct by resolution, or when ever a petition signed by ten per cent of the active members of the Association from each of not less than three of the Supreme Court Judicial Districts shall be filed with the Secretary. The Secretary shall conduct such referendum within thirty days after any such resolution or petition is filed with him under such rules as may be prescribed by the Executive Council."

The creation of the House of Delegates this year in my view, will, be one of the important things to be done by the Association next year —thirty-five men to be elected from the various state judicial districts. The members of the Executive Council will be members of the House of Delegates, as will the Section Chairmen and the Association's Delegates to the House of Delegates of the American Bar Association. I hope that the selection of the elected personnel of this first House of Delegates will receive the very thoughtful consideration of every member of this Association, for that first House of Delegates will cut the pattern for years to come. If it is a vigorous body, well informed, composed of men who will work and take time to study and think about the welfare of this Association and our bar, we can, I believe, have made a long step forward. So much for that.

Other things of major importance have occurred during the year. I especially commend to you the work of the committees—many of them have done remarkable work and of particular importance, the report of the Committee on Judiciary.

You will recall that a couple of years ago the members of this Association in a referendum, by a vote of 933 to 380, mandated this Association to endeavor to put upon the ballot a proposed constitutional amendment involving adoption in Nebraska of the Merit Plan for the Selection and Tenure of Judges, sometimes called the American Bar

Association Plan, sometimes called the Missouri Plan. That job is *the* job of this Association next year.

I also suggest careful consideration of the report of the Committee on American Citizenship. I direct your attention to the report of the Special Committee on Rules of Disciplinary Procedure which is re-studying our disciplinary procedure. I also direct your attention to the report of the Committee on Legal Education, and also direct your attention to the fact that under the new rules there has been created a Law Student Membership in this Association.

In closing, I will do what I assume every President has done—make a recommendation. I expect this to have the same fate as has been the fate of most of the recommendations of my predecessors.

I suggest that it is time to re-study our Sections. The Sections of this Association ought to be a major activity. We all are aware of the increasing interest of lawyers in the bread-and-butter subjects. You don't come to bar association meetings just to have a good time. This Association does not exist for the purpose of entertaining its members.

I suggest that we should consider, first of all, whether we have the right Sections. I wonder whether we should have a Real Estate and Probate Law Section? Why throw those two subjects together? Perhaps we should have a Probate Law Section and separately a Real Estate Law Section. We should have a Law Student Section.

The Executive Council, for your information, by action taken last month, has abolished the Section on Municipal Law. It also, by action taken last month, created, what the Rules since 1937 have required us to have though we have never had it, a Section on Taxation.

Why are automobile accident matters the concern of a Section on Insurance Law? These are tort problems, not contract law. There are many problems in this area. I suggest a re-study and a re-consideration of what Sections we ought to have.

Secondly, and more importantly, I suggest consideration of the form of organization of the Sections.

Currently—and this has been true for ten or fifteen years—there is no continuity in the program of any section. No section has any continuing program of activity or study whatsoever. It simply meets once a year, and whoever happens to be chairman finally gets around to getting up *a* program to present at *the* annual meeting. That is the full good that we get out of our sections.

There is so much work to be done by lawyers in the areas that are proper for the activity of the Bar Association that I suggest consideration of working out some effective form of organization of sections. For example, I wonder if we should have a Council for each section, composed perhaps of six men, each elected for a term of three years, with staggered terms so that you elect two each year. To try to get some continuity in the organization and conduct of our programs in

the sections. I wonder what form of section members we ought to have—presently, notwithstanding rules, there is none. Gentlemen, under the new rules, at the next annual meeting there will be adequate time for full section programs. We had better have good programs or we are going to lose interest in our annual meetings, because the House of Delegates will handle the business of the Association while meeting the day in advance of the annual meeting.

There are many other things concerning which I would like to talk. I would like to emphasize our program of Continuing Legal Education; to remind you that last December we had our tenth annual Tax Institute, and our eleventh is planned and coming up, and that yesterday we set the date for our December, 1954, Tax Institute; that last May we had the invigorating, inspiring Regional Meeting of the American Bar Association here, with many Institutes in connection with it; that in June we had our Institute on New Legislation, and yesterday we had a splendid Institute on Appellate Practice and Procedure. We are going to hear a little more about Institutes and Continuing Legal Education Friday Afternoon from John Mulder, Director of the Committee on Continuing Legal Education of the American Law Institute, who is on the Friday afternoon program.

Many new teaching techniques have been developed, and you will see at least one of them in operation at the forthcoming Tax Institute—when our programs will be printed, fully outlined, in what I am sure will be a very pleasing style.

I suggest that perhaps the time has come to soldify the program of Continuing Legal Education by the creation of a Standing Committee on Continuing Legal Education charged with carrying out the full program.

This report to you is far from complete or comprehensive. Many things ought to be said which I have left unsaid, but I can't close without an expression of very deep gratitude for the help, the service, the counsel, the constant assistance of our Secretary-Treasurer, whose report will now be made. Mr. Turner!

TO: MEMBERS OF NEBRASKA STATE BAR ASSOCIATION

You will soon be asked to express in a referendum whether the annual dues of our association should be raised from $10 to $20 for Senior Members, from $5 to $10 for Junior Members, and from $2 to $5 for Inactive Members. Your Committee on Budget and Finance, both as a body and each member individually, recommends these increases.

Your Committee has made a careful study of the financial needs of the association and its expenditures (You will find a report in detail in a recent issue of the Nebraska State Bar Journal). We are running from $1,000 to $2,000 behind with only our present activities.

We obtained reports from all of the Bar Associations in the country and also reports on the dues of other professional and other associations. After all of the necessary information was obtained, a meeting of the Committee was held on May 2, 1953. Thirteen of the twenty-four members of the Committee were present. There were present all of the Officers of the Association and all members of the Executive Council, also the Chairman of the Public Relations Committee and the Chairman of the Committee on American Citizenship. We spent all afternoon discussing the financial affairs of the association and it was apparent that without raising the dues, some of our present activities would have to be curtailed.

After a careful study of the situation, the Commitee was unanimous in its opinion that if our association is to hold its present rank among the progressive Associations, and best serve its members, it will have to put on a Public Relations program somewhat along the lines of the Minnesota Association. This will cost from $10,000 to $12,000 per year. Everyone favored such a program. It was found that by raising the dues above mentioned, we could continue our present activities and also put on a full Public Relations program. It was thereupon resolved and unanimously carried that the Executive Council be informed that it is the careful and considered view of the Committee that the Supreme Court be requested to increase the dues from $10 to $20 per Senior Member, from $5 to $10 per Junior Member and $2 to $5 for Inactive Members. The Executive Council was further requested to take immediate steps so that such additional dues would be in effect beginning January 1, 1954.

Practically every State Association during the last three years increased its dues and in some states the dues are as high as $25 per year. In others they are $20 per year and in many $15.00. However, in those states where the dues are $15 or less, it is the general practice to charge registration fees to their institutes and to their annual meetings. These are free to our members. The Doctors in our state pay annual dues of $35 per year. Besides, every so often, they have special assessments.

Many of the Labor Unions have dues far in excess of what we recommend for our members. In Omaha, the Labor Union dues are as follows:

Carpenters	$2.75 to $3.00	per mo.
Operating Engineers	$7.50	per mo.
Bakery Drivers	$2.50	per mo.
Inside Bakery Workers	$2.00	per mo.
Truck Drivers	$4.00	per mo.

If our profession is to maintain a high standard, we must have an association that will actually function for the benefit of the members and this cannot be done effectively without financial means.

The Committee members present at the meeting were unanimous in recommending the foregoing raises. Since then all absent members of the Committee, (except Mr. Elliot who has removed from the State), were contacted by telephone and every such member expressed hearty approval and joins in recommending the proposed dues. The Committee, not only as a Committee but each member individually, favors the change. We believe that it is to the best interests of the profession and of the individual lawyers. We, therefore, urge every member to vote in favor of the proposed dues.

Respectifully,
COMMITTEE ON BUDGET & FINANCE

JOSEPH T. VOTAVA, *Chairman,* Omaha
ROBERT H. BEATTY, North Platte
LOWELL C. DAVIS, Sidney
HARRY J. FARNHAM, Omaha
MILES N. LEE, Broken Bow
ANDREW D. MAPES, Norfolk
WILLIAM S. PADLEY, Gothenburg
FRED H. RICHARDS, JR., Fremont
LEON SAMUELSON, Franklin
VARRO E. TYLER, Nebraska City
R. R. WELLINGTON, Crawford
FRANK D. WILLIAMS, Lincoln
C. J. CAMPBELL, Lincoln
GEORGE L. DELACY, Omaha
CLARENCE E. HALEY, Hartington
VANCE E. LEININGER, Columbus
FRED S. MARTIN, Minden
WILLIAM B. QUIGLEY, Valentine
DONALD F. SAMPSON, Central City
DANIEL STUBBS, Alliance
EDWARD L. VOGELTANZ, Ord
CARL E. WILLARD, Grand Island
M. H. WORLOCK, Kearney

TO ALL PRACTICING ATTORNEYS IN THE STATE OF NEBRASKA:

Recently, many extensive public opinion polls have been taken to determine what the general public thinks of lawyers. The results of these polls are startling. The problems facing the individual lawyers and Bar Associations have been analyzed as follows:

"*First,* the evident misunderstanding by a large part of the press and the public as to the character and place of courts and lawyers under our system of government.

Second, the continuing lack of knowledge on the part of the general public of the service a lawyer performs, and what it is likely to cost.

Third, the trend away from the court as a desirable tribunal for the settlement of disputes, due to its slowness, delay in functioning, and lack of confidence in its efficiency.

Fourth, the aggressive competition which the lawyer encounters from lay agencies and laymen."

The Public Relations Committee of the Nebraska State Bar Association, after careful investigation and mature consideration, has arrived at a specific and concrete program, designed *first* to elevate the opinion of the public and press regarding the legal profession, and *second,* to educate the public to the need for the services of a lawyer in such matters as preparation of a will, estate and tax planning, real transactions, and other similar every day problems.

The contemplated program is both extensive and expensive. A few of the recommended proposals are as follows:

1. *Hire a public relations expert to work full time for the Nebraska State Bar Association.* This public relations director would write and supply newspapers with news stories reflecting favorably on the legal profession. He would also write, under the supervision of lawyers, a series of articles of general public interest pertaining to the need and advisability of seeking legal advice on various phases of every day life. At least twelve State Bar Associations, including our neighboring states of Minnesota and Colorado, have already undertaken aggressive public relations programs. The committee has secured and studied pamphlets and articles published by these associations. These cannot, however, be reprinted and distributed without careful editing to make them applicable to the laws of Nebraska. Particular attention would be given to the smaller newspapers throughout the state for the reason that such newspapers will readily offer the necessary space. The metropolitan newspapers have agreed to run a series of such articles. Other newspapers throughout the state are being contacted. This task, however, involves not only the preparation of the articles but coordination and follow up work which can be done only by a full time, skilled, newspaper man, our proposed public relations director. There are numerous other functions, too numerous to mention, which a public relations director would perform. For your information, we contemplate paying this director an annual salary of from $5000 to $6000. Experience of other Bar Associations establishes conclusively that a skilled and experienced expert is necessary and that a poor program

is worse than no program. Twelve State Bar Associations now employ a full time public relations director.

2. Publication and free distribution on a state-wide basis of a *Juror's Manual.* This booklet would be distributed to each person who reported for jury service. It would explain in simple, non-professional language the functions performed by lawyers, the operation of our court system, the educational and moral requirements to qualify as a lawyer, and a digest of our professional Code of Ethics.

3. Publication and free distribution of additional *pamphlets* through law offices and banks on such subjects as "Do you need a Will," "Joint Tenancy," "What To Do In Case of an Automobile Accident," "Landlord and Tenant," "First Steps in Buying a Home," "Are You Overpaying Your Taxes," "So You Want to Go Into Business," "It's Free but it Costs You" (unauthorized practices), "What Problems Confront us when we Adopt a Child," "Am I Responsible for My Child's Mischief," "How do Old Folks Turn Over Property to Young Folks," "Civilians into Soldiers," "Are you Sure you Want to Sign that" (contracts), and many other such pamphlets.

In this connection, we know that the public distribution of our two previous pamphlets reached 200,000 people in Nebraska. The state of Minnesota had a distribution of over 2,000,000 such pamphlets.

4. Institutional advertising with particular attention to banks and real estate companies. This would consist of advertising in Assocation publications and House Organs and newspapers, as well as distribution of pamphlets such as "Meet Your Lawyer," "When do I Need a Lawyer," "A Lawyer Counsels with Man and Wife," etc. Particular attention would be called to the dangers of laymen attempting to give advice on legal matters.

5. Furnish speakers to all meetings of county agricultural associations, Farm Bureau programs, 4-H Club meetings, and auxiliary organizations. The director would make the necessary contacts, secure the speakers, and coordinate such activities. The director would do research and prepare sample speeches.

6. Furnish framed copies of our professional Code of Ethics to be hung in each Court Room with the notation "presented by the 'local' Bar Association."

7. Public relations work in high schools with particular attention to the functions of our courts and legal profession.

8. Continuation and expansion of radio programs now being run over Station KBN at Omaha, KGFW at Kearney, KFOR at Lincoln, and KNRN at Lexington. In this connection, the American Bar Association and other state associations have already prepared transcriptions. The transcriptions can be purchased for a cost of approximately $250 per series.

9. Television panel discussions.

Many other ideas and programs are being investigated and considered. Time and space, however, do not permit a more detailed presentation.

Obviously, such a program will cost substantial money. The Budget and Finance Committee of the Nebraska Bar Association have advised our committee that funds for such a program cannot be made available unless the State Association dues are increased.

We feel certain that when the individual lawyers understand the purpose for which the additional money will be spent, they will approve almost unanimously the public relations program and vote for an increase in Association dues in order to make such a program possible.

The medical and dental professions and even the larger labor unions are already engaged in extensive public relations programs. The American Bar Association and twelve other State Associations are now spending substantial funds in professional public relations work. We feel that our state must likewise enter agressively into a public relations program or continue to suffer public misunderstanding, uncomplimentary jokes, lack of public trust, and diversion of purely legal business into unprofessional channels. Such a public relations program will result in better protection of the public and an increase in aggregate law business.

We invite your attention to an excerpt from the public opinion polls taken in Iowa, Michigan, Californa and Texas on the subject of what the general public thinks of the legal profession. We also invite your attention to quotations from the Presidents of the Colorado and Minnesota Bar Associations as to what effect public relations programs have had in their respective states.

We will appreciate your thoughtful consideration of the program outlined only briefly above and will further appreciate your voting for an increase in dues to make such a program possible.

Sincerely,

NEBRASKA BAR ASSOCIATION
PUBLIC RELATIONS COMMITTEEE

ROBERT C. BROWER, Fullerton
JEAN B. CAIN, Falls City
THOMAS F. COLFER, McCook
CLARENCE A. DAVIS, Lincoln
HANS J. HOLTORF, Gering
JAMES A. LANE, Ogallala
DONALD P. LAY, Omaha
WILLIAM H. MEIER, Minden

ROBERT R. MOODIE, West Point
JACK C. OSBORNE, Omaha
JOSEPH R. SEACREST, Lincoln
JUDGE ROBERT R. TROYER, Omaha
JAMES J. FITZGERALD, *Chairman,* Omaha

The following are some of the findings in public opinion polls completed in 1952 of the relations between the general public and the legal profession:

1. Only *four out of every ten adults* have ever engaged the services of a lawyer.

2. Dishonesty, combined with other unethical conduct, is singled out by *25 per cent* of the public as what they dislike about lawyers. The percentage goes up to *32 per cent* among persons who have hired lawyers.

3. *Sixteen per cent* of the people who have hired lawyers think that even *aside from their work* lawyers are less honest than other people. *Thirty-seven per cent* of those who have hired lawyers think that *in their work* lawyers are less honest than other professional people.

4. When asked whether they think that most, some, very few, or no lawyers will "break rules and do shady things in order to protect their clients," *twenty-four per cent* say most lawyers will, *thirty-five per cent* say some lawyers will, *thirty-six per cent* say very few lawyers will, and four per cent have no opinion and *only one per cent* say no lawyers will.

5. *Only fifty-one per cent* of the public thinks it is a rare occurance for one lawyer to sell out to the other side in a legal fight. Of those who have hired lawyers, *forty-nine per cent* think very few lawyers will sell out to the other side, *thirty-two per cent* think some lawyers will, and *twelve per cent* think most lawyers will.

6. *Only fifty-two per cent* of the public thinks lawyers can be trusted to expose and help punish other lawyers who engage in unethical practices.

7. *Only sixty-three per cent* of the public thinks it is a good thing for lawyers to hold public office.

8. Lawyers as a class are rated low as community leaders. In the classification of bankers, lawyers, doctors, teachers, businessmen, farmers, ranchers, and labor leaders, *lawyers tie for last place* with labor leaders.

9. In rating which profession "does the Most Good for the public," the ratings are (1) Medical Doctors (2) Preachers (3) School Teachers (4) Bankers (5) Engineers (6) *Lawyers* (7) Chiropractors. And, except for chiropractors, the public thinks lawyers "do the least good for the public."

10. *Only forty-five per cent* of the public would go to lawyers, in preference to others, for advice in drawing up real estate deeds or leases.

11. Only *twenty-one per cent* have a will.

"The Minnesota State Bar Association has had a planned public relations program since 1948 under the direction of a full-time public relations director. The lawyers of this state agree almost unanimously that the results achieved in Minnesota are excellent. We already have done much to correct the former misunderstanding by the public of the proper function of lawyers and our courts. Lawyers also almost unanimously agree that a very large volume of legal business now is coming to lawyers which previously was either handled by laymen or not at all.

"Adequate financing of such a program is absolutely essential. We have solved this problem by raising our dues $10.00 per year per member,

and setting aside the additional money so derived solely for public relations work.

"We enthusiastically recommend such a program to other state bar associations."

CLIFFORD W. GARDNER, Minnesota Bldg., St. Paul, Minn., President, Minnesota State Bar Association. (Many of you will remember Mr. Gardner, prominent trial lawyer, who enacted the role of the plaintiff's lawyer at the Institute on Civil Jury Trials at the Regional ABA Meeting in Omaha, May 1, 1953)

"We have had a planned public relations program in Colorado for several years, and are very enthusiastic about the results. Under the guidance of a professional public relations man, we have developed a continuous program of news columns, radio programs, pamphlets, folders and other mailings, institutional advertising, press releases furnishing lawyer news, speakers, bureaus, and other media.

"The money we have spent on this program is the grestest investment we have ever made, not only in enhancing the prestige of lawyers and courts, but also in effectively combating the unauthorized practice of law, channeling much legal business to lawyers, and stimulating people to seek the services of lawyers who otherwise would have 'muddled through' their difficulties without legal services, to their own detriment. "We are completely convinced of the beneficial results flowing from our program. I recommend such a program to other bar associations, without reservation."

JEAN S. BREITENSTEIN, Symes Bldg., Denver 2, Colorado
President, Colorado Bar Association

TO THE PRACTISING LAWYERS OF NEBRASKA

There is enclosed a ballot for your use in a referendum on what we believe to be the most important decision the lawyers of this state have faced for many years. Your vote will have a substantial effect upon your future and that of all lawyers and judges of this state.

A brief explantation of the proposal is attached. It has the *unanimous* endorsement of the Committee on Public Relations, the Committe on Budget and Finance, the Executive Council and the officers.

We urge you to vote affirmatively. Please note the instructions on the ballot and return it within the time stated thereon.

BY ORDER OF THE EXECUTIVE COUNCIL:

WILBER S. ATEN
PAUL H. BEK
PAUL P. CHANEY
GEORGE B. HASTINGS
LYLE C. JACKSON
BARTON H. KUHNS
PAUL L. MARTIN
THOMAS C. QUINLAN
HARRY A. SPENCER
JOSEPH C. TYE
LAURENS WILLIAMS, *President*

NEBRASKA STATE BAR ASSOCIATION

PROPOSAL:

Increase the annual dues as follows:

Active Members	
In Practice less than 5 years	From $ 5.00 to $10.00
In practice more than 5 years	From $10.00 to $20.00
Inactive Members	From $ 2.00 to $ 5.00

PURPOSE:

(1) Balance the budget. We have been operating "in the red" since 1950.

(2) Finance a permanent, continuous, comprehensive public relations program, under the guidance of a full-time public relations director, through:

(a) Weekly newspaper columns, which point up the needs for and value of legal services.

(b) Press releases covering lawyer news.

(c) Wide public distribution of pamphlets, folders and other mailings, such as "Meet Your Lawyer," "What to do in Case of an Automobile Accident," "First Steps in Buying a Home," "Are you Overpaying Your Taxes?," "How do Old Folks Turn over Property to Young Folks," "Are You Sure You Want to Sign That?," "See Your Lawyer before Entering Military Service," "Joint Tenancy," "Do You Need a Will."

(d) Institutional advertising, on such subjects as "How the Public Suffers from Unauthorized Practice of Law," "Why the Cannons of Legal Ethics," "Why You can Trust Your Lawyer," "How a Lawyer can Help You," etc.

(e) Radio and television programs.

(f) Motion pictures.

(g) Speakers' Bureaus.

(h) Jurors' Manuals, and many other media.

(3) Expand and improve the quality of our program of continuing legal education, through institutes, seminar, forums, lectures and section meetings.

(4) Expand the work of our committees.

(5) Put the Nebraska State Bar Journal on a permanent quarterly basis.

(6) Create a "Law Student" Membership (as requested by the University of Nebraska and Creighton law students) to enable law students to participate in our institutes and meetings, and receive our publications.

(7) Provide a legislative service and representation during the Legislative Sessions.

The additional revenue, which such an increase in dues will provide, will finance these things.

Omaha, Nebraska
October 10, 1953

TO ALL MEMBERS:

Within the next week you will receive a ballot to express your preference on the proposal to create a House of Delegates. A complete set of all proposed amendments to the Rules of the Supreme Court, which in effect constitute this Association's "Constitution," will accompany this ballot.

The proposal was approved at the Annual Meeting in 1950. It since has been given exhaustive further study by a Special Committee of the Membership and by the Executive Council. It is now under consideration by the Supreme Court. The purpose of the Referendum is to make known the wishes of the Membership to the Supreme Court.

The proposal is the outgrowth of what appears to be a rather widespread feeling that too few members have an active voice in Association affairs, and that important policy decisions often are made by relatively few persons.

Under our present system, it is inevitable that this be so. The Executive Council is, in effect, the governing body of the Association. Although it consists wholly of elected members, and thus is truly representative, there are only eleven members—the president, the immediate past president, three members elected at large, and six other elected members—one from each of the State Supreme Court Judicial Districts. Usually the Executive Council meets five or six times a year.

However, the Association meets in Assembly only during the Annual Meeting once a year. Only about 30 per cent of the members attend the Annual Meeting, and often less than 2 per cent of the members attend the routine business sessions of the Assembly. Under the present system, unless you happen to be present at the Annual Meeting and on the floor when the vote is taken on a particular matter, you are not represented and lose your vote on that matter.

Under the proposed plan, a House of Delegates would be created consisting of 35 elected members—one member per district judge in each State Judicial District, elected by the lawyers in the state. In addition, the five Section Chairmen, and the eleven members of the Executive Council, would be members, as would the Association's Delegates to the House of Delegates of the American Bar Association. The House of Delegates thus would have a total membership of 53.

The House of Delegates would meet the day in advance of the Annual Meeting, hear the Committee Reports and transact the routine business of the Association.

This would accomplish the following things:

1. Give us a truly representative form of government, responsible to the membership. Under this system, your views would be expressed by your elected representative.

2. Create a policy-making body of 53 members.

3. Free a substantial amount of time at the Annual Meeting, now consumed by routine business sessions in which few members are interested, so that more time may be devoted to Section meetings and programs of practical value.

Under the plan, the Association would still meet in Assembly at the close of the Annual Meeting, to hear a report of the action taken by the House of Delegates. The Assembly would retain full veto power over the House of Delegates.

The detailed plan has the unanimous approval of the Special Committee of the Membership, which has been considering it for several years, and of the members of the Executive Council. Many other state bar associations are now operating with increased efficiency under similar plans.

Obviously, this Association is coming into an era during which it will have a substantially enlarged program. It also is obvious that the members want more and better institutes, symposiums, and practical "how-to-do-it" programs in the area of continuing legal education. There are innumerable neglected areas in which this Association can and should be rendering valuable service to its members and to the public. After ten months in this job of being president of your Association, I have a new appreciation not only of the responsibilities, but also of the opportunities for really worthwhile service to the members that do exist. It is my firm conviction that the creation of the proposed House of Delegates will result in a more vigorous, more efficient and effective Association which will be of far greater value to its members and to the public.

All of the members of the Executive Council and the officers are anxious that there be a full expression of opinion from the membership. Let us make our wishes known decisively to the Supreme Court!

"Vote as you please—but VOTE."

LAURENS WILLIAMS, *President*

To the Members of the Nebraska State Bar Association:

The matter of securing a more representative and responsible form of government for our association by the creation of a House of Delegates has been under consideration for the past three years. The

general plan was approved by the membership of the association meeting in assembly by a substantial majority vote of those present.

Amendments to the rules to effectuate this proposal have been exhaustively considered and unanimously approved by the Executive Council and by a special committee of the membership. They are now under consideration by the Supreme Court.

You will recall that by action taken by the Assembly at the 1951 annual meeting the Executive Council was directed to make such alterations in the proposed rules which had been approved at the 1950 annual meeting as were deemed advisable. On the copy of the rules enclosed herewith all material which has been eliminated since the original approval in 1950 is indicated by a "strike line." All new material which has been added, either by the Special Committee or by the Executive Council, is shown in italics.

Overleaf is a copy of the final draft thereof; also a ballot for you to express your personal views with reference to the same. Please note the instructions upon the ballot and return the same within the time specified on the ballot.

The result of this referendum will be reported to the Supreme Court at an early Session.

BY ORDER OF THE EXECUTIVE COUNCIL

LAURENS WILLIAMS, *President*
GEORGE H. TURNER, *Secretary*

PROPOSED AMENDMENTS TO RULES CREATING, CONTROLLING AND REGULATING NEBRASKA STATE BAR ASSOCIATION

The PREAMBLE AND ARTICLE I (remain the same).

ARTICLE II—MEMBERSHIP

1. Those persons who, on January 1, 1938, are residents in this state and are licensed to practice law in this state, and those who shall thereafter become licensed to practice law in this state and are residents of this state, shall constitute the *active and inactive* membership of the Nebraska State Bar Association. *Any regular student enrolled in an approved law school in the State of Nebraska may be admitted to law student membership upon the certificate of the Dean of the law school.*

2. Each member shall, within sixty (60) days from the effective date of these Rules, file with the Secretary of the State Bar Association, a statement setting forth his business address and his residence address, and the Judicial District within which his principal office is located. He shall notify the Secretary in writing of any subsequent change in address.

3. Where is appears that non-resident attorneys in good standing are engaged in the practice of law within the State of Nebraska, wholly in the employ of the United States Government or some Federal governmental agency or corporation on a salary basis, and who participate in no other way in the

active practice of law, it is not required that they shall comply with the requirements as to registration under these rules.

ARTICLE III—CLASSES OF MEMBERSHIP

1. Members of the State Bar Association shall be divided into ~~two~~ *three* classes; namely, active members ~~and~~ , inactive members , *and law student members.*

2. The class of active members shall include all members who have not specifically requested to be enrolled as inactive members . *and are not law student members.* (Balance of section unchanged.)

3. (Remains the same.)

4. (Remains the same.)

5. A law student membership shall be granted to each law student in an approved school in the State of Nebraska upon presentation of an annual certificate of the Dean of the law school that the applicant is regularly enrolled as a student in the school as a candidate for a law degree and is recommended for membership. A law student member shall be entitled to attend all meetings and functions of the State Bar Association, to receive all publications distributed to active members, to receive such aid and services as the State Bar Association can render, and to such other privileges as may be granted to them by the Executive Council from time to time. A law student member shall not be entitled to vote or hold office, but may, in the discretion of the President, be appointed to membership on committees of the Association. A law student membership shall terminate upon graduation.

ARTICLE IV—MEMBERSHIP DUES

Sections 1 through 5 inclusive. (Remain the same.)

6. LAW STUDENT MEMBERSHIP. A law student member shall not be required to pay dues.

ARTICLE V—ORGANIZATION

1 OFFICERS. The officers of this Association shall be a President, Chairman of the House of Delegates, and a Secretary-Treasurer. The President and Chairman of the House of Delegates shall be elected at the time and in the manner provided by the By-Laws of the Association. The President shall be elected for a term of one (1) year and the Chairman of the House of Delegates shall be elected for a term of two (2) years.

a. The President shall preside at all meetings of the Association and of the Council, and shall perform the duties usually belonging to such office. He shall also deliver an address at the regular meeting of the Association next succeeding his election.

b. The Chairman of the House of Delegates shall preside at all meetings of the House of Delegates. In the event of the death, disqualification, resignation or removal from the state of the President of the Association, the Executive Council shall declare the office of the President vacant and the Chairman of the House of Delegates shall assume the office of President and the Executive Council shall designate a successor as Chairman of the House of Delegates who shall serve for the balance of the term. *or of the Chairman of the House of Delegates, the Executive Council shall declare such office vacant. In the event of a vacancy in the office of President, the Chairman of the House of Delegates shall assume the office of President for the unexpired term; in the event of a vacancy in the office of the Chairman of the House of Delegates,*

the Executive Council shall designate a successor from the membership of the House of Delegates who shall serve for the balance of the term.

c. The Clerk of the Supreme Court shall be the Secretary-Treasurer of the Association and ex-officio Secretary of the House of Delegates. The Secretary-Treasurer shall be the custodian of the records and archives of the Association, and shall preserve and record its transactions. He shall collect all dues and other moneys belonging to the Association, and shall send out notices to delinquent members. He shall be the custodian of the moneys of the Association, which he shall disburse under the authority of the Council. He shall make a monthly report to the President of all expenditures for the preceding month and submit a report of such expenditures for the approval of the Council at each regular or special meeting and shall make a report as Treasurer at the annual meeting, and shall receive reasonable compensation for his services.

d. No member shall be eligible for election as President of the Association or Chairman of the House of Delegates, or member of the Executive Council unless he shall have served previously as a member of the House of Delegates or of the Executive Council. (Said rule to be instituted in the year 19—.) (4 years after the adoption of these recommendations.) ((One of these alternatives to be adopted.)) *This section to become effective as to officers assuming office at the close of the annual meeting in the year 1958.*

2. HOUSE OF DELEGATES. Except as otherwise provided herein, the administration of the Association shall be vested in the House of Delegates which shall consist of:

a. The members of the Executive Council.

b. The Chairman of each section shall be ex-officio member of the House of Delegates during his term as such chairman . , *unless such section shall elect a delegate instead of other than such chairman to serve for a term of one year.*

c. Delegates from the Judicial Districts as follows:

1st District 1 Delegate	7th District 1 Delegate	13th District 2 Delegates
2nd District 1 Delegate	8th District 1 Delegate	14th District 1 Delegate
3rd District 4 Delegates	9th District 2 Delegates	15th District 1 Delegate
4th District 9 Delegates	10th District 2 Delegates	16th District 1 Delegate
5th District 2 Delegates	11th District 2 Delegates	17th District 1 Delegate
6th District 2 Delegates	12th District 1 Delegate	18th District 1 Delegate

Such delegates shall be elected for two years by mail ballot under regulations prescribed by the Executive Council. The Executive Council, in case of failure to receive at least two nominations for each delegate, shall make additional nominations so that there will be at least two nominees from which the selection is made. No elected delegate may hold office as such during more than two consecutive terms, nor shall members of the judiciary be eligible to become elected delegates. At the first election of the delegates, the odd numbered districts shall elect their delegates for one year and the even numbered districts for two years. Vacancies in the offices of elected delegates shall be filled by appointment by the Executive Council.

d. The Association's Delegates to the American Bar Association shall be ex-officio members of the House of Delegates during their terms of office as Delegates to the American Bar Association.

e. The House of Delegates shall have the following powers and duties:

1. To receive and act upon the reports of all committees of the Association.

2. To receive and act upon the reports of the sections of the Association.

3. To propose and initiate such policies for the Association as may be deemed advisable and designate appropriate personnel to carry out and make effective such policies.

4. To exercise all of the powers of the Association not otherwise specifically delegated herein and subject to the action of the members of the Association as herein provided.

5. To report to the annual meeting of the Association a summary of its actions.

A referendum of the members on any action taken by the House of Delegates shall be conducted whenever the House of Delegates or the Executive Council shall so direct by resolution or whenever a petition signed by ten per cent of the active members of the Association from each of not less than three of the Supreme Court Judicial districts shall be filed with the secretary. The secretary shall conduct such referendum within thirty days after any such resolution or petition is filed with him under such rules as may be prescribed by the Executive Council.

3. EXECUTIVE COUNCIL. The Executive Council of the Association shall consist of the President of the Association, the Chairman of the House of Delegates, and nine (9) other members, three (3) of whom shall be known as "Members at Large," and six (6) of whom shall be known as "District Members." The immediate past president of the Association shall be a member of the Council for the year following his term as President. As the terms of office of the Members at Large of the present Executive Council shall expire, their successors shall be elected by the Association at the time and in the manner provided by the By-Laws of the Association, for a term of three (3) years.

a. The Executive Council shall be the executive organ of the Association, shall have sole authority to approve the expenditure of funds, and the contracting of obligations, shall constitute the nominating committee, and shall ~~be the supreme legislative and administrative body of the Association when the House of Delegates is not in session.~~ *and when the House of Delegates is not in session shall exercise the legislative and administrative powers of the Association.* In addition to the other duties hereinbefore provided, the Council shall provide suitable programs and entertainment at the meetings ~~thereof~~, *of the Association,* recommend by-laws from time to time, as they appear to be required, fix the compensation to be allowed any officer *or employees,* nominate officers, including Members at Large of the Council, to be voted upon by the Association. The Council shall not nominate any one of its members for any office. In case of any vacancy in its membership, the Council shall have the power to fill such vacancy by appointment until the next regular election as herein provided, unless such appointment is inconsistent with other provisions of these rules.

b-1. As their terms of office expire, the District Members shall be elected as follows: There shall be elected one (1) member for each of the six (6) Supreme Court Judicial Districts, as said districts are now numbered and constituted, or as they hereafter may be constituted. Said members shall be residents of the district which they represent, and shall be elected by the qualified members of the Association residing within such district. Their term of office shall be three (3) years.

b-2. The District Members shall be elected by a secret mail ballot within the calendar month next succeeding the annual meeting of the Association, in the following manner: The Secretary shall receive nominating petitions until the close of the day next following the conclusion 6 *P. M. of the first day*

of the annual meeting of the Association. The names of the two members whose petitions contain the largest number of signatures of members qualified to vote shall be placed on a printed ballot, except that every nominee receiving fifteen signatures of members qualified to vote shall be placed upon such ballot, but signatures for more than one candidate shall not be counted. If nominating petitions are not presented to the Secretary within the time prescribed, nominating at least two (2) candidates, the Executive Council shall nominate additional members so as to place two (2) candidates on the ballot, but, in such case, there shall be nothing to indicate whether a candidate was nominated by petition or by the Executive Council. The ballot shall contain one blank space for writing in any name the voting member may desire.

b-3. Ballots shall be mailed to every member of the Association within the proper district not later than the 15th day of the calendar month succeeding such annual meeting. The ballots shall be returned to the office of the Secretary not later than the last day of such month, and only the ballots of those members shall be counted who are in good standing, including payment of their dues for the year next preceding such election. The member receiving the highest number of votes at such secret ballot shall be the duly-elected member of the Council for such district, and shall take office immediately upon his election.

b-4. The Council shall make necessary rules for the distribution of ballots, for the counting of votes, and for the conduct of elections as shall carry out the true purpose of this section, but such regulations shall not contravene the express provisions hereof.

4. *NOMINATIONS.* Nominations other than those by the Council may be made by any member, but only in writing, filed with the Secretary. In case there are nominees for any office other than those by the Council, election to such office shall be by secret ballot, restricted to members in good standing.

5. *ABA DELEGATES.* At the time of election of other officers of this Association in even numbered years, the Association shall elect its delegates to the House of Delegates of the American Bar Association. Any member of this Association who is also a member of the American Bar Association, shall be eligible to be elected such delegate. Such delegates shall be nominated and elected at the same time and in the same manner as officers of this Association, and shall serve for a term of two years and until his *their* successors shall have been elected and certified. In the event of such delegates being unable to act for any reason, the Executive Council is empowered to fill such vacancy. *vacancies.*

ARTICLE VI—COMMITTEES AND SECTIONS

Committees of the Association may be employed for the promotion of the objects of the Association, *Committees of the Association may be created or abolished from time to time,* and shall consist of limited numbers of members, with their number, jurisdiction, methods of election and their tenure determined in accordance with the By-Laws.

Sections of the Association may be created or abolished from time to time by the House of Delegates in such manner as may be provided by the By-Laws.

ARTICLE VII—BY-LAWS

Suitable by-laws not inconsistent with these rules may be provided by a majority vote at a regular meeting of the House of Delegates.

ARTICLE VIII—MEETINGS

1. The Association shall have one regular meeting annually (except in case of an extreme emergency) at a time and place to be fixed by the Executive

Council three (3) months prior to such meeting. Immediately upon designation of the time and place of such meeting by the Executive Council, each member of the Association shall be notified thereof by the Secretary by mail. If the Council so orders, the proceedings of such meetings may be edited and published in a suitable form by the secretary-treasurer, and copy thereof furnished to each member free of charge.

2. The House of Delegates shall meet on the day prior to the first day of the annual meeting, and shall be recessed from time to time throughout the general meeting and hold a final session after the final session of the annual meeting. The President may call the meeting of the House of Delegates so that it may be in session more than one day prior to the annual session. The Executive Council may call special sessions of the House of Delegates in case of extreme emergencies. ~~A majority of the Members of the House of Delegates shall be~~ considered a quorum for the transaction of business. *A majority of the elected members of the House of Delegates shall constitute a quorum for the transaction of business.*

In case of an extreme emergency the Executive Council, *with the approval of the Supreme Court,* may dispense with the calling of a meeting of the Association, but in such event shall call in lieu thereof a special session of the House of Delegates.

4. An annual meeting of the Executive Council shall be held at the place selected for holding the annual meeting of the Association, at time preceding the Annual Meeting of the Association, and such other meetings shall be held at such time and place as the president may fix upon three days' notice by mail. Six members of the Executive Council shall be a quorum for the transaction of business.

ARTICLE IX—AMENDMENTS

Recommendation to the Court of amendments to these rules recommended by a three-fifth (3/5) vote of the Council may be adopted by a majority of the House of Delegates present at a regular meeting. Recommendations for amendments not so recommended by the Council must be submitted in writing at a regular meeting of the House of Delegates, and unless approved by a vote of two-thirds (2/3) of the Members of the House of Delegates present, shall lie over and not be acted upon until the next meeting.

ARTICLE X—No changes

ARTICLE XI—No changes

IN THE SUPREME COURT OF NEBRASA

	Case No. 30179
IN RE INTEGRATION OF THE NEBRASKA STATE BAR ASSOCIATION	APPLICATION FOR AMENDENT OF THE "RULES CREATING, CONTROLLING AND REGULATING NEBRASKA STATE BAR ASSOCIATION"

Comes now Nebraska State Bar Association, by its Executive Council and respectfully represents that:

1. On October 20, 1950, meeting in Assembly during its "Fifty-First Annual Meeting," this Association adopted a proposal of its Executive

Council that this Court be requested to amend certain of the "Rules Creating, Controlling and Regulating Nebraska State Bar Association" in the manner recommended by a Special Committee which had been appointed to study the form of government therein provided for the Association. (30 Nebraska Law Review 301-328).

2. The request was submitted to this Court on March 9, 1951, due notice of the time and place of hearing thereon having been given by this Court to all members of the Association.

3. Thereafter this Court suggested to the Association's Executive Council that a referendum be conducted on the proposed amendments in which all active members of the Association might vote.

4. On November 15, 1951, meeting in Assembly at its "Fifty-Second Annual Meeting," this Association duly adopted the following Resolution:

> "RESOLVED: That the Executive Council forthwith shall submit a mail referendum to the members of the Association for the approval or disapproval of the proposed changes in the Rules Creating, Controlling, and Regulating the Nebraska State Bar Association approved by the Association at its 1950 annual meeting, and that in submitting said proposition the Executive Council is directed to make such alterations in the proposed Rules as subsequent discussion has indicated may be advisable, and shall in the letter transmitting the ballot direct specific attention to any such changes." (31 Nebraska Law Review 153-8)

5. Such referendum now has been conducted.

(a) Attached hereto, marked Exhibit 1, is a duplicate original of the letter transmitting the referendum ballot which was duly mailed by the Secretary on October 15, 1953 to each active member of the Association at his or her mailing address as the same appeared on this Court's records.

(b) Attached hereto, marked Exhibit 2, is a duplicate original of the form of Ballot which was enclosed with each transmittal letter.

(c) Attached hereto, marked Exhibit 3, is a duplicate original of the return envelope which also was enclosed with each transmittal letter.

6. 1034 ballots were returned to the Secretary: 901 were cast for the proposal, 133 against it.

Attached hereto, marked Exhibit 4, is the original Certificate of the Canvassing Board, composed of the Honorable Harry R. Ankeny, District Judge of the Third District, the Honorable Herbert C. Ronin, County Judge of the County of Lancaster, and Walter D. James, Supreme Court Reporter and Revisor of Statutes.

Wherefore Nebraska State Bar Association respectfully requests that the Rules Creating, Controlling and Regulating it be amended in conformity with the final draft of the Proposed Amendments contained in Exhibit 1 attached hereto.

NEBRASKA STATE BAR ASSOCIATION

By LAURENS WILLIAMS: (*signed*)
Its President

STATE OF NEBRASKA }
COUNTY OF DOUGLAS } SS

Laurens Williams deposes that he believes the allegations of this Application are true.

LAURENS WILLIAMS: (*signed*)

Subscribed and sworn to before me November 4, 1953.

GAIL TAYLOR (*signed*)
Notary Public

REPORT OF SECRETARY-TREASURER

GEORGE H. TURNER: The books of the Association have been audited by the firm of Martin and Martin, Certified Public Accountants of Lincoln, for the thirteen-month period extending from October 1, 1952, to October 31, 1953.

The Cash Receipts for that period amounted to $33,743.07, and Cash Disbursements amounted to $26,400.69; resulting in an excess of receipts over disbursements of $7,342.38. The Cash Balance in the Association treasury as of October 31, 1953, was $9,905.89.

The principal income of the Asosciation is from the dues of members. During the period covered by the audit, dues of active members amounted to $30,720, and dues from inactive members, to $2,021. Of the amount of dues thus received during the period covered by the audit, $10,420 was for 1954 dues which are now being paid to the Treasurer. The only other substantial item of income was the sum of $1,002.07 received as reimbursement of money expended by the Association in the investigation and prosecution of disciplinary charges against former members of the Association. Two such disciplinary actions were involved, each resulting in the disbarment of a lawyer. The expense of such investigations has been repaid by the respondent in each case.

The principal items of disbursement were: Salaries and Payroll Taxes, $5,459.50; Office Supplies, Printing, Postage and Stationery, $2,872.74; Publication of the Proceedings of the 1952 annual meeting, $4,488.15; Officers' Expense, $1,938.17; Expense of Representatives in the American Bar Association, $1,359.29; Cost of Conducting Four Institutes During the Year, $2,733.97; Total Cost of Committee Activity, $1,034.65; and Cost of 1952 Annual Meeting, $2,688.84.

The auditors verified all deposits with the First National Bank of Lincoln and verified disbursements by an examination of canceled

checks. The auditors conclude their report by stating that in their opinion the funds of the Association have been properly accounted for during the period under review.

This audit report was submitted to the Executive Council at its meeting yesterday and has been approved. A copy will be included in the proceedings of this annual meeting. I therefore move that the report be received and filed.

PRESIDENT WILLIAMS: You have heard the motion. What is your pleasure? Is there a second?

LYLE E. JACKSON (Neligh): I second the motion.

PRESIDENT WILLIAMS: Comment? All in favor say "aye"; those opposed, the same sign. Carried unanimously and so ordered.

I might add that the balance in the Treasury on October 1 was about $900.00, but it went up to $9,000 because in the meantime some of you paid your 1954 dues.

The report of the American Bar Association Delegate, by the Honorable Clarence A. Davis.

REPORT OF AMERICAN BAR ASSOCIATION DELEGATE

CLARENCE A. DAVIS: Mr. President, Ladies and Gentlemen: As one of the two delegates of this Association to the House of Delegates of the American Bar Association, it is a privilege to have the opportunity to report to you some of the activities and positions taken by the American Bar Association at its Seventy-Fifth Diamond Jubilee Celebration in Boston, August 23-28, 1953, and at the preceding February Mid-Year meeting in Chicago.

I hope the practice of reporting to this Association the doings of the American Bar will be followed annually. Many of you belong to the American Bar Association, but I am sorry to say that many more do not. I wish all of us belonged to the American Bar. In the nature of things, it is the spokesman of the profession, and in this complicated and competitive age the lawyers need a spokesman who can speak authoritatively for the lawyers of America and speak at a level where their voice will be heard.

The American Bar Association has about fifty thousand members, but there are nearly two hundred thousand lawyers in the United States. However, I need not remind you that the American Bar Association is entirely governed by a House of Delegates quite similar to that recently adopted in Nebraska, a system of representative government by approximately two hundred lawyers representing every state and every Bar Association in the United States; and while it is sometimes attacked as representing only a minority of American lawyers, nevertheless, because of the broad scope of its representation

of all states and all Bar Associations, state and local, I suspect its voice is the authentic voice of the vast majority of American lawyers.

The scope of the American Bar Association's work is so vast that in the time allotted I could not even read the working agenda of the last meeting of the House of Delegates. There is not a facet of American life or American law on which it does not have standing or temporary committees, working committees that are giving of their time and talent to the solution of the problems of the profession and of the country. This morning I shall take only a few minutes to tell you briefly a few subjects to which the American Bar is devoting itself. These are necessarily the more broad and spectacular subjects. Their mention is not to minimize the tremendous work of the Sections in the technical and specialized fields of law, which, if mentioned, would appeal largely to members specializing in the particular field.

1. The great drive of the American Bar this year has been toward the planning and financing of the American Bar Center in Chicago. There, on the campus of the University of Chicago on land donated by that institution, the American Bar Association is constructing a home, a building worthy of the Association, for the permanent housing of its headquarters staff, perhaps ultimately a research center, a library and the other things that might appropriately go with a great organization. Several hundred thousands of dollars have been raised by contributions of the lawyers. The building is assured, the ground-breaking ceremony has taken place, and we are very fortunate to have it in the center of the country, in Chicago, and not along the Eastern Seaboard.

2. The American Bar is taking a very strong position on the question of professional ethics. There are difficult problems. Many of our flagrant violations of ethics occur in places far distant from the jurisdiction in which the lawyer is admitted to practice. The enthusiasm at home to disbar a lawyer for things he does in distant places is always limited.

Further problems are raised by the Courts of the District of Columbia in washing their hands of Codes of Ethics before the numerous government departments in Washington, except as committed by the members of the local bar—which many are not—leaving what is close to a vacuum in a field that is particularly vulnerable to unethical conduct.

3. The question of Social Security coverage for lawyers or a personal retirement plan through tax exemption has been considered. It is still the feeling of a vast majority of the Bar that independent practitioners do not wish and should not be covered by Social Security unless it is made all inclusive. At least twenty bills are pending in Congress, shading all the way from individual participation in Social Security, clear over to the left of the Townsend Plan. What will come out of it, nobody knows. Maybe both plans.

4. The Committee on Unauthorized Practice is doing a noble work. You are all familiar with the general accord which this committee reached with the Certified Public Accountants last year. It is now devoting a lot of time to the problem of gratuitous advice by home office counsel of life insurance companies and has arrived at a set of principles which, in substance, draw the line between the functions of the lawyers for the policy holders or the estate, and the functions of advice by home offices with reference to estate planning, a complicated field in which home office counsel of the life insurance companies have been most cooperative and will alter many of their practices to prevent their intrusion into the relationship between the policyholder and the lawyer.

5. The American Bar has taken a strong position in opposition to some casualty insurance company advertising of the type which you may have seen in recent months, which undertakes to tell prospective jurors (the public) that when they render verdicts against insurance companies, they are paying the money out of their own pocket through higher rates. Advertising of this type by insurance companies has been condemned as tampering with justice, and the companies have agreed to discontinue the practice.

6. A Committee on Individual Rights and National Security has been working for months on the legal problems which grow out of congressional investigations—a hot problem legally and politically.

There is no doubt that the Fifth Amendment is being made a mockery in many cases by people who do not need it as a protection for themselves, but use it as an excuse to conceal what they know about other people and organizations.

As you know, many sincere people feel (although they have difficulty in explaining why) that some of these investigations encroach on the Bill of Rights. Personally, I could be more moved by this plea if these same people had been equally solicitous about the near invasion of other sections of the Bill of Rights in the past—illegal searches and seizures, including books, records, and personal mail, the denial of due process of law, and the near confiscation of property.

7. The Committee on Communist Tactics and Activities has been constantly alert and is now attacking the problem of lawyers who claim immunity from testimony on the ground of self-incrimination under the Fifth Amendment. That Committee has well said:

"When a citizen or attorney refuses to testify on the ground that his testimony might tend to incriminate him of undisclosed crimes, then upon his own sworn statement which we must assume is honestly and sincerely assested, his personal constitutional right must be honored, but in asserting this right he, himself, has thereby disclosed disqualification for the practice of law."—by admitting the necessity of concealing criminal conduct.

The Committee is seriously considering the formation of a panel of highly reputable members of the Bar to advise with many former communists who sincerely desire to repent, that they may be advised of their Constitutional rights and not be intimidated and misled by communist or communist employed lawyers.

8. The American Bar has been urging Congress, and the bill has already passed the Senate, to restore the right of jury trials in condemnation cases, at the request of the landowner, thereby amending by statute 71A of the Federal Rules which in recent years has eliminated many such jury trials. With the great program of federal works in prospect in this area, the right to trial by jury on behalf of landowners whose property will be appropriated is an important thing.

9. For the fourth consecutive year and by a larger majority than ever before, the House of Delegates reaffirmed its solid support of the principle of the Bricker Amendment, providing that treaties shall not supersede domestic law. This year there was an appeal to the members from the decision of the House, before an audience in a Boston auditorium that was quite top-heavy with visitors who quite obviously were all supporting a group of Boston lawyers who were opposing the Bricker Amendment. In spite of that fact, the members, themselves, stood firm in their position supporting the amendment.

10. The whole problem of whether lawyers in government should attain a status under the Civil Service laws is under complete examination. The argument is, of course, that all lawyers, in the very nature of their profession, are policy makers and leaders. The whole conception of Civil Service is that of the nonpartisan career worker who is only carrying out the policy of others—a difficult thing for advisory lawyers. I prophesy the clash of these two theories will continue to grow.

The speakers at the general sessions this year included President Storey who gave the finest address I have yet heard him make, the Lord Chancellor of Great Britain, the Attorney General of the United States, the Secretary of State of the United States, and the President of the Canadian Bar Association.

May I repeat that the American Bar Association is the only voice that will be listened to on behalf of the lawyers; that if our profession is to maintain its preminence in society and the dignity and weight which should be accorded its opinions, it will only be done through the organized Bar.

PRESIDENT WILLIAMS: Thank you, Mr. Davis.

The report of the Judicial Council will be made by Robert R. Moodie, a member of the Judicial Council, in the absence of Judge Carter, its chairman, Mr. Moodie!

REPORT OF JUDICIAL COUNCIL

ROBERT R. MOODIE: Mr. President, Ladies and Gentlemen: As you all know, the Judicial Council was created some years ago by rule of the Supreme Court. Its purpose is to make a study of methods for the improvement of justice, to recommend methods to the Supreme Court so that the Supreme Court may perform its constitutional duty of making recommendations to the legislature.

The members of the Judicial Council are judges of the Supreme Court, district court, county courts, practicing lawyers, and laymen.

In the last year nine recommendations which were made by the Judicial Council to the Supreme Court, and by the Supreme Court to the legislature, were enacted into law. Those were all fully discussed in June at the Institute on New Legislation. I won't discuss them here, except to call attention to the subjects covered. Two of them related to the powers of district judges at chambers; one repealed a section of the Criminal Code which was thought might be unconstitutional; two related to appeals from municipal courts and justice of the peace courts; one related to garnishment in aid of execution, amending the law which was enacted two years previously relating to garnishment; one was a public service bill providing for the transfer of title of motor vehicles of a value of less than $700.00; one was the Uniform Jury Selection bill, which adopted the key number system for all counties in the state; and one provided that a notice of the order to show cause in application for license to sell real estate by administrators and executors would be published instead of a copy of the order to show cause. Those were the bills which were adopted this year.

I know that Judge Carter, as Chairman of the Judicial Council, would have me tell you that the Judicial Council welcomes suggestions from the Bar in the field of the improvement of the administration of justice and invites lawyers to communicate with him any suggestions they might have in that area.

One of the things that has bothered the Judicial Council through the years and for which we have found no satisfactory answer to date, is the problem of keeping the Bar informed on the subjects which are being considered by the Judicial Council and which have been recommended to the Supreme Court. I invite you to communicate to Judge Carter any suggestions you might have which would enable us to keep you fully informed of what the Judicial Council is doing.

PRESIDENT WILLIAMS: Thank you very much, Mr. Moodie. May I suggest that when we have our State Bar Journal rolling, certainly it will have adequate space to give to the Judicial Council to enable the Judicial Council to report quarterly to the members of this Association exactly what matters it is considering. That is just one of the dozens of things which we hope we can accomplish through our State

Bar Journal. Will you pass that suggestion along to the Chairman of the Judicial Council, please, as a potential method of telling us what the score is.

I am sorry to have to announce that we have had to close the sale of tickets for the style show and luncheon this noon for the ladies. It is just a little too popular. I'm sorry. We didn't anticipate, frankly, that the effort we are making to provide entertainment for your wives and ladies was going to be quite as popular as it apparently is. We have run out of tickets. The hotel can't accommodate any more. We are sorry if your wife unfortunately didn't send in an advance registration, as requested, or hasn't already got a ticket. If we cannot now supply you, we can only apologize and guarantee you that it is now evident that your wives want to come along to these meetings and want entertainment. When we do it again we will have adequate room for everybody—but we will still hope that you send in your reservations in advance.

PRESIDENT WILLIAMS: In the next seventy minutes we must try to complete consideration of nineteen reports. Obviously, the time available does not make it possible for us to give mature consideration to the very many fine reports of our committees which must be heard at this time. I regret that it is so, but face the fact that it is so. I therefore have done something which I didn't like to do—I have allocated that time among the committee chairmen on the theory that lawyers are able to read, and that you have read the committee reports in the advance programs. The assumption will be that you have not only read the committe reports but that you know what is in them. On that theory I have asked some of the committee chairmen to limit their report, and action on it, where possible, to as little as two minutes. Now, that is unfair. It is not right, but that is the way it is going to be. We are not invoking cloture. You may comment, you may debate, etc. However, I do remind you that our rules limit debate on the floor to two minutes per speaker, and that no one may speak more than once on the same subject. I am going to enforce that rule unless overruled, because we must try to get through the business of this association.

The report of the Committee on County Law Libraries, Charles B. Paine, Chairman. Mr. Paine!

CHARLES B. PAINE: Mr. President, the report of the Special Committee on County Law Libraries is found in the advance program on Page 18-20. The report concludes: "As there continues to be a need for the work of such a committee, we therefore recommend that a Special Committee on County Law Libraries be continued for another year."

On behalf of the committee, I move the adoption and approval of the recommendation that this Special Committee be continued for one more year.

WALTER G. HUBER (Blair): I second the motion.

PRESIDENT WILLIAMS: Is there any discussion? This committee has done a splendid job. Are you ready for the question. All in favor say "aye"; all opposed, same sign. Hearing none, I declare the motion unanimously adopted and it is so ordered.

Report of the Special Committee on County Law Libraries

This special committee was established seven years ago to investigate the possibilities of establishing county law libraries throughout the state. At that time there were only a comparatively few such law libraries. Since that time many new libraries have been established and there has been a rapidly growing recognition of the need and desirability of having effective local law libraries.

The work of the Committee this year has been largely research as to exactly what facilities exist throughout the state and a careful consideration was given as to future ways to lend assistance, where needed, in establishing or improving such libraries. Reports have been obtained during this year from all but one of the counties of the state.

The report disclosed that there is wide variety of ways in which such libraries are established and maintained. That is as it should be. In each county, different conditions exist and the lawyers in each county meet their needs as local conditions require.

It is also evident, however, that a very great deal of work is yet required in order to achieve that goal that adequate library facilities are established, maintained and will be made available wherever, and to the extent they are needed throughout the state.

Many surprising facts were developed. For example, of three of the older and larger counties reporting, which were listed in earlier reports of this Committee as having good libraries, one now states that there has been no library additions in over 30 years and two report no additions in over 15 years. The Committee submits that such libraries are totally inadequate to meet present day needs.

The results of the survey indicate that approximately half the counties have a county library, and at least half of that number need substantial improvement.

On the other hand, the recent developments have been most heartening. New county libraries have been started during the year; others are in the planning stages. There have been a number of increases, in amounts available for purchases, library space, shelving and facilities have been expanded in a number of cases. Lawyers and law associations, in many cases, have become increasingly interested in the problem.

One county attorney, co-operating with this committee, wrote to the attorney general for advice as to the use of county appropriated funds for assistance in maintaining a county law library. We quote the reply:

"Dear Sir:

In your letter of July 27, 1953, you ask whether your county may lawfully continue to appropriate a small sum for the maintenance of a county law library, used by county officials, and use of funds appropriated to the District Court for incidentals such as postage and stationery. While the subject of your request may not require an official opinion of this office, we believe that under the general authority vested in counties by statute, these expenditures might be reasonable and proper. See R. S. Neb. 1943, sections 23-104, 23-120, 23-121, and section 25-2214. Wherry v. Pawnee County, 88 Neb. 503.

Very truly yours,

CLARENCE S. BECK,
Attorney General
s/ Bert L. Overcash
Bert L. Overcash
Assistant Attorney General"

The committee believes that the problem of county law libraries is essentially a local problem, to be solved in each local community as its needs require. The Committee is convinced, however, that the Nebraska State Bar can render further worthy service to judges, county officials, and lawyers and through these groups, to the public, in the way of finer better legal services, by continuing its program of bringing to the attention of the lawyers the many benefits of effective county law libraries. It is the opinion of this Committee that county law libraries of high standards can be established and maintained everywhere as soon as the local lawyers in the various communities fully realize the value of such libraries.

The file of reports about the present libraries should prove to be a valuable source of information for further work next year and a basis for additional studies and comparisons. It is felt that such a committee as this may help in bringing home to lawyers of this state the possibilities and benefits of effectively functioning local law libraries.

Your Committee expresses to Joseph C. Tye, Co-ordinator for this Committee, its appreciation for his splendid help, constructive suggestions, and co-operation during the past year.

As there continues to be a need for the work of such a committee, we therefore recommend that a Special Committee on County Law Libraries be continued for another year.

CHARLES B. PAINE, *Chairman*
JOSEPH C. TYE, *Co-ordinator*
HARRY R. ANKENY

EDWIN CASEM
W. C. CONOVER
LAWRENCE S. DUNMIRE
ROBERT S. FINN
ROBERT B. HAMER
WALTER G. HUBER
JOHN H. KERIAKEDES
EARL E. MORGAN
CARLOS E. SCHAPER
NORMAN E. STEPHENS
JOSEPH T. VOTAVA

PRESIDENT WILLIAMS: The report of the Committee on Legal Education, Dean James A. Doyle, Chairman. Dean Doyle!

JAMES A. DOYLE: Mr. President, Members of the Bar: Upon the assumption that you have read the report, I will comment extremely briefly on the items which have been considered by this committee.

First, this Committee considered a change in the rules of admission to require graduates of approved law schools in other states who desire admission in Nebraska to take the regular Nebraska State Bar examination. I understand that this recommendation is presently being considered by the Nebraska State Bar Commission.

The second matter considered by our committee related to the creation of a Law Student Membership in the Nebraska State Bar Association. This was originally submitted to the committee by representatives of the Creighton University Bar Association. This Law Student Membership would admit students of approved law schools in the State of Nebraska to membership in the State Bar and the privileges that such membership, except the holding of office, would allow. This was submitted to the Executive Council at its May meeting and approved. It has since been approved by a referendum of the Association.

The third item considered was the program of Continuing Legal Education. It is the recommendation of this committee that every effort be made to improve the work in this field. We feel that it represents one of the most valuable and significant developments in the field of legal education and that it should receive every encouragement of the members of this Association.

Mr. Chairman, I recommend the adoption of this report.

PRESIDENT WILLIAMS: Dean Doyle, there are several recommendations. I wonder if you first would make a motion with reference to your Recommendation No. 1, which appears on Page 17 of the program, relating to the change in the rules of admission.

MR. DOYLE: The committee recommends a change in the rules of admission to require that graduates of approved law schools in other

states may be admitted to practice in Nebraska (1) upon satisfactory proof of at least three years of experience in the practice of law in the immediate five-year period, or (2) by taking and passing the regular examination given by the State Bar Commission in Nebraska.

PRESIDENT WILLIAMS: Is there a second?

EDMUND O. BELSHEIM (Lincoln): I second the motion.

PRESIDENT WILLIAMS: You have heard the motion. Is there any discussion? If not, all those in favor say "aye"; those opposed, same sign. The Chair is not in doubt and declares the motion carried though not unanimously.

MR. DOYLE: The second recommendation made by the committee related to the creation of a Law Student Membership. That has been accomplished and enacted by your referendum and, I understand, by action of the Supreme Court last Saturday.

The only remaining recommendation relates to the encouragement that should be given to the program of Continuing Legal Education in Nebraska. I move the adoption of that recommendation.

PRESIDENT WILLIAMS: Is there a second?

WALTER G. HUBER (Blair): I second the motion.

PRESIDENT WILLIAMS: All those in favor say "aye"; all opposed, same sign. Unanimously carried.

Report of the Committee on Legal Education

The Committee on Legal Education reports the following activities:

1. **Admission to the Bar.** Under the current rules governing admission to practice in Nebraska, a graduate of an approved law school, who has been admitted to practice in another state, may be admitted to practice in Nebraska without examination. A few states remain in which admission to practice may still be gained without the necessity of passing a state bar examination. Under the existing rule a graduate of an approved school in such a state, who had been admitted to practice there without examination, may transfer his citizenship to Nebraska and gain admission to practice here without examination. On the other hand graduates of approved law schools in Nebraska are required to pass the Nebraska bar examination.

The Committee recommends a change in the rules of admission to require that graduates of approved law schools in other states may be admitted to practice in Nebraska (1) upon satisfactory proof of at least three years of experience in the practice of law in the immediate five year period or (2) by taking and passing the regular examination given by the State Bar Commission in Nebraska.

The Committee has been advised that the Nebraska State Bar Commission has taken cognizance of the problem and that it will recommend to the Supreme Court a revision of the rules relating to admission that will require the graduates of approved law schools

admitted to practice without examination in another state to take and pass the bar examination before being admitted to practice in this state.

II. Law Student Membership. The Committee considered and recommended favorably to the Executive Council a proposal to create a law student membership in the Association for law students regularly enrolled in the two approved law schools in Nebraska. Law student membership would be granted to such students upon the basis of a certificate from the Dean of each law school. Law student members would be accorded all of the privileges of active members, except the right to vote and hold office. Appointment of law student members to committees would rest in the discretion of the President of the Association. Such members would receive the Nebraska Law Review and other publications of the Association and be entitled otherwise to the privileges of full membership.

This committee recommended this new form of membership because it believes that the introduction of law students to Association activities will encourage them to take a more active part in all professional activities after they have been admitted to practice. The Committee also believes that this will encourage a closer relationship between law students and members of the Bar and will contribute to more effective legal education. Other states in which law students have been admitted to membership in the state association have reported favorably to your Committee.

The Committee's recommendation was approved by the Executive Council in May and will be submitted to the membership in a referendum.

III. **Continuing Legal Education.** *The Committee recommends that the program of continuing legal education carried on by the Association should be strengthened and enlarged.* The Committee feels that the program represents one of the most valuable and significant developments in the field of legal education and that the Association should consider the ways in which it may be made even more beneficial and effective.

JAMES A. DOYLE, *Chairman*
GEORGE B. HASTINGS, *Co-ordinator*
E. D. BEECH
E. O. BELSHEIM
CHARLES F. BONGARDT
FRANK M. JOHNSON
WARREN C. JOHNSON
JOHN C. MASON
HIRD STRYKER, JR.
DAVID R. WARNER

PRESIDENT WILLIAMS: The next report, ladies and gentlemen, is a very important report, and I have allotted ten minutes for it. The report of the Committee on the Judiciary, Mr. Robert Van Pelt, Chairman. Mr. Van Pelt!

ROBERT VAN PELT: Mr. President, Members of the Association: The report of the Committe on the Judiciary is printed on Pages 22 to 25 of the printed program. We have concluded that we would not read the report in detail. There are certain things about it that I want to comment on. There is one point that comes up on which you are going to have to take a vote.

Interestingly enough, in a committee of twenty we were evenly divided, ten and ten, on one propostion. It was concluded that it should therefore be referred to the floor for you folks to decide. That proposition relates to the size of the committee that will do the recommending; in other words, selecting the three names to be presented to the Governor. I am now referring to Section 5 on Page 22 where it says: "In case of a vacancy in the office of Chief Justice or associate justice, a committee shall be chosen composed of (and there was a blank to be inserted) laymen to be selected by the Governor until otherwise provided by law, and (blank) lawyers, to be selected by mail ballot... etc."

The question is, Shall we have a committee of seven? or, Shall we have a committee of thirteen? Before we can finally move the adoption of the report, it will be necessary that we decide that question.

I have asked Lloyd Pospishil to present the argument on behalf of those who wanted a committee of thirteen. I wonder if Lloyd is in the room? If he is not, I have a lengthy letter from him that I will not read in detail but will summarize to you the arguments presented by those who favored the larger committee, namely, thirteen.

In the first place, he says that the smaller committee composed of three laymen, three lawyers, and a Justice of the Supreme Court, would give the Justice of the Supreme Court an opportunity to dominate the workings of the committee.

In the second place, as to the office of Chief Justice he points out that on a state-wide level, the committee of thirteen is preferable to the smaller committee.

In the third place, he says that quite a little selling is going to have to be done to secure the adoption of the amendment, and he believes that if you have a larger number of laymen on the committee it might help in selling it so far as the people are concerned.

In the fourth place, he calls attention to the area, and that some people might not be able to attend the meeting, and as a result you would have a better attendance in a committee of thirteen than you would have with a committee of seven.

His fifth reason is that they are talking of increasing the size of the unicameral, and that he believes the arguments in favor of a larger unicameral would apply in favor of the larger committee, making it thirteen rather than seven.

His sixth reason is a question: What objection is there to the larger committee? Thirteen heads are better than seven heads.

Those, in substance, are the reasons that are advanced.

I asked two different fellows who voted in favor of the smaller committee to present the arguments with reference to the smaller committee. Both of them turned me down on it. In substance, the arguments in favor of the smaller committee are these: First, there is an advantage in smallness rather than in considerable size, and that having a committee of six or seven—seven would be the number—rather than thirteen would be an advantage in itself. Second, as to the office of Associate Justice of the Supreme Court, if you have six lawyers out of a district on the committee, it has been suggested that it might eliminate a number of fellows who otherwise should be considered for the office of Associate Justice, and therefore it is advisable to have only three lawyers on the committee rather than picking six from the Supreme Court districts. It was also suggested that it would be easier to get the smaller committee together. Lastly, it was suggested that in other states, particularly the only other state that has followed it, Missouri, three is the number of lawyers and three the number of laymen in that state, and therefore we should follow the same procedure of having a committee of seven—three lawyers and three laymen.

With that brief statement, Mr. President, and before I go into other matters of the report, I believe it would be advisable if it meets with your approval to take a poll of this Association because of the fact that on a twenty-man committee ten of the members favored a committee of thirteen and ten favored a committee of seven.

PRESIDENT WILLIAMS: Will those who favor a committee of thirteen please raise your right hand; will those who favor a committee of seven raise your right hand? The vote is forty-five for a committee of thirteen; thirty-nine for a committee of seven.

MR. VAN PELT: May I say to you that it was a issue on which the committee was really not mad, or anything of the kind. I am sure every one will go along with this result.

It has been pointed out that Section 21 of Article V of the Constitution should also be amended. We have an amendment to Section 21, which is not in the printed report. It has been approved by Mr. John J. Wilson. When I finally make the motion to adopt the committee report, it will be with the understanding that the entire matter be referred to the Executive Council for any change in wording that the Executive Council deems necessary.

We then stand in the committee report in this place: That we are proposing the amendment of these sections of the Constitution. We are proposing a new Section 15A and we are proposing to amend Section 21 whereby the so-called American Bar Association Plan, sometimes called the Missouri Plan, and many of us believe that our President in calling it the Merit Plan has come up with the proper name for it, that that plan be adopted in Nebraska, and if adopted under these proposed amendments it will affect Judges of the Supreme Court, District Judges, and County Judges in counties of 100,000 or more; namely, County Judges in Lancaster County and in Douglas County, with an optional provision by an election to adopt the provision in any of the other counties that want to adopt it.

Now may I answer one question there that somebody is likely to ask? It was raised with me this morning: Why was it not made a mandatory provision in all counties? It was pointed out by various members of the committee that in so many counties in Nebraska, the County Judge is not a lawyer; that it would be a mistake to adopt a constitutional amendment that would provide for the appointment of a lawyer to the office of County Judge in all of the counties of Nebraska. Therefore, it was made optional in counties under 100,000.

With that in mind, I think I have covered the points that are at issue so far as the adoption of the plan is concerned, and we therefore are going to eventually move the adoption of the report, referring to the Executive Council the matter of any change in wording, if such is necessary.

I now turn to another matter in connection with the report that I think should be called to your attention. I am not overlooking matters on Page 24 in which we point out to you the number of signatures that are required and the work that is going to have to be done by the Junior Bar to put this on the ballot and, finally, to secure its adoption. It is an important undertaking.

I also do not want to overlook, but will not take time, to give thanks to a great many who are not on the committee who have rendered valuable service. That is referred to in the report. We think it is important, but I will not take your time to read those acknowledgments.

I now want to call your attention to the last paragraph of the report because your committee believes it is a highly important matter that must be referred to next year's committee. We recommend and feel that these proposed constitutional amendments go only part way, so far as the improvement of the judiciary and their position is concerned, and therefore we recommend to the Association that measures be formulated by next year's committee for presentation to the 1955 session of the legislature providing for a salary of $15,000 per year for Judges of the Nebraska Supreme Court. The committee were unanimous in their feeling that $15,000 was the proper figure to be paid a

Judge of the Nebraska Supreme Court; and either $10,000 or $12,000 per year, as the committee determines, for judges of the District Courts. There were some on the committee who felt it should be $10,000, some thought it should be $12,000 and we cooncluded not to ask for a vote but to leave it to next year's committee to decide whether the difference in the salaries should be $3,000 or $5,000; and that an adequate retirement plan be provided for the judges of both courts. The present committee has been studying the matter of adequate salaries and of a retirement plan but feels that more time should be given the matters, and that the recommendations should be presented to the Judges before action is taken by the Association. We therefore propose that the matter of judicial salaries and retirement should be referred to next year's committee for further study and for a report at the annual 1954 meeting.

It has been suggested in the last few days that perhaps that report should be available at an earlier date. I think, again, that that would be in the hands of the officers of the Association and of the committee. A great deal of work has been done by the present committee, and I think it is entirely probable that a report could be available by January or February with reference to the retirement plan. The committee was unanimous that there should be a retirement plan for Judges of the District Court and Judges of the Supreme Court. This committee in its other division to which I referred wants to make it clear to you that there isn't any doubt in their minds but that the salaries must be raised and that we must provide an adequate retirement plan.

With those remarks, Mr. President, I move the adoption of the report, with the understanding that I mentioned earlier about the reference to language in the constitutional amendments to the proper committee.

WILLIAM J. HOTZ (Omaha): I second the motion.

PRESIDENT WILLIAMS: May I inquire with reference to the motion, Mr. Van Pelt, and the committee's report, I take it that there is no thought that adoption of this motion binds this Association to recommendation of any particular dollar figure with respect to salaries or to any particular retirement plan. That portion of the report I construe to be simply a recommendation that those problems be referred to next year's committee with the information that this year's committee had these opinions.

MR. VAN PELT: You are entirely correct in that observation.

PRESIDENT WILLIAMS: Is there any discussion of the motion?

WALTER G. HUBER (Blair): I would like to ask Mr. Van Pelt if any consideration was given to having the matter of County Judges covered under this in counties over 16,000 population, rather than having it for just the two counties.

MR. VAN PELT: There was some conversation about it, Mr. Huber, but we finally concluded in the committee that we would stay with the two larger countries and not drop down because there seemed to be a question as to whether all the persons in counties from 16,000 to 100,000 favored making the change.

ROBERT R. TROYER (Omaha): Where in the amendment does it say that a County Judge has to be lawyer?

MR. VAN PELT: It is not required, I believe, in the amendment itself.

JUDGE TROYER: I didn't want misinformation to get out because it might cause some opposition in certain places. Let's not have a misunderstanding that a County Judge is required by this amendment to be a lawyer.

PRESIDENT WILLIAMS: Thank you, Judge.

Are there other comments?

WILLIAM G. WHITFORD (Madison): I think Mr. Huber is in error in saying that Judges in counties over 16,000 should be lawyers. The fact is, the counties that require County Judges in counties over 16,000 can't practice law in any court in this state.

PRESIDENT WILLIAMS: Any other comment or discussion? Are you ready for the question? All those in favor of the motion signify by saying "aye"; opposed, same sign. The motion is unanimously carried, Mr. Van Pelt. Thank you for a year's fine work.

Report of the Committee on the Judiciary

Your commitee on judiciary this year has been chiefly concerned with the peparation of amendments to the Constitution of the State of Nebraska necessary for submission to the electors, of our Association's proposal that the so-called American Bar Association or Missouri Plan for the selection of judges be adopted. A number of meetings of the committee have been held and Mr. John J. Wilson, bill drafter for the Nebraska Legislature has given of his time in the preparing of the amendments hereinafter proposed.

We therefore propose the amendment of Article V, Sections 4, 5, 10 and 15 of the Constitution and the addition of Sections 5A and 15A, whereby as amended the sections will read as follows:

"Section 4. The Chief Justice of the Supreme Court shall be selected from the state at large. The associate justices of the Supreme Court shall be selected from the districts as provided in section 5 of this Article. The term of office of all the Justices of the Supreme Court shall be six years, during which they shall reside in the city where the State Capitol is located. No Justice of the Supreme Court now in office or hereafter shall be deemed thereby to have lost his residence at the place from which he was selected.

"Section 5. The Legislature shall divide the state along county lines into six compact districts of approximately equal population, which shall be numbered from one to six, consecutive numbers to be given adjacent

districts. Such districts shall not be changed, except upon the concurrence of two-thirds of the members of the Legislature, nor shall any such change vacate the office of any justice. Until otherwise changed, the districts as now constituted and numbered shall be the Supreme Court judicial districts.

"The Chief Justice and associate justices heretofore elected or appointed, shall each retain his office for the term for which he was elected or appointed, and at the end of his term, his name may be placed upon the ballot as provided in Section 5A of this Article to succeed himself or to have his office become vacant as the electors shall decide. In case of a vacancy, a successor shall be selected as provided in this section to fill the unexpired term.

"In case of a vacancy in the office of Chief Justice or associate justice, a committee shall be chosen composed of laymen to be selected by the Governor until otherwise provided by law, lawyers, to be selected by mail ballot of lawyers eligible to practice before the highest court in Nebraska, residing within the State of Nebraska as to Chief Justice and within the Supreme Court judicial district as to justices, under rules to be promulgated by the Supreme Court, and a Justice of the Supreme Court selected by the Supreme Court, acting as chairman of such committee. All members of the committee, except the justice of the Supreme Court, shall reside in the Supreme Court judicial district where the vacancy exists. The committee shall select three lawyers eligible to practice before the highest court in Nebraska and residing in the Supreme Court judicial district and submit the three names to the Governor, who shall appoint one of the three suggested to fill the vacancy. Every such committee may act only by the concurrence of a majority of its members. The members of the committee shall receive no salary or other compensation for their services as such, but they shall receive such necessary traveling and other expenses incurred while actually engaged in the discharge of their official duties as the Legislature shall provide.

Section 5A. Prior to the end of the term, the incumbent justice, district judge or county judge as provided in Section 15 of this Article, may apply to the election authorities as provided by law for re-election and his name shall be placed upon the ballot at the general election held immediately prior to the expiration of his term, without party designation, with the words:

'Shall (Justice or Judge) .....
(Here the name of Justice or Judge will be inserted)
of the (Supreme Court, District Court or County Court) be retained in office? ☐ *Yes* ☐ *No.'*

If a majority of those voting on the question vote against retaining him in office upon the expiration of his term of office, a vacancy shall exist which shall be filled by appointment as provided in Section 5, 10 or 15 of this Article, as the case may be; otherwise the justice or judge, unless removed for cause, shall remain in office for the number of years after the first Thursday after the first Tuesday in January following such election as is provided for the full term of such office. He shall be eligible for retention in office by election in the manner prescribed in this section.

"Section 10. The state shall be divided into district court judicial districts. Until otherwise provided by law the boundaries of the judicial districts and the number of judges of the district courts shall remain as

now fixed, and the present district judges shall retain their office until the end of their term or their office otherwise becomes vacant. The judges of the district courts, in case of vacancy, shall be selected for the remainder of the unexpired term by a committee composed of three laymen to be selected by the Governor until otherwise provided by law, three lawyers to be selected by mail ballot of lawyers eligible to practice before the highest court in Nebraska and residing within the district, under rules to be promulgated by the Supreme Court, and a justice of the Supreme Court to be selected by the Supreme Court who shall act as chairman of such committee. The members of the committee, except the Justice of the Supreme Court, shall reside in the district of the judge whose office is vacant. The committee shall select three lawyers eligible to practice before the highest court in Nebraska from the district qualified to fill the position, and submit the three names to the Governor, who shall appoint one of the three selected to fill the vacancy. Every such committee may act only by the concurrence of a majority of its members. The members of the committee shall receive no salary or other compensation for their services as such, but they shall receive such necessary traveling and other expenses incurred while actually engaged in the discharge of their official duties as the Legislature shall provide.

"Prior to the end of the term the incumbent judge may apply to the election authorities for re-election as provided in Section 5A of this Article.

"Section 15. In the year 1956 and every four years thereafter there shall be elected in and for each county, except in counties having a population of more than one hundred thousand inhabitants and in counties which have elected, under the provisions of Section 15A of this Article, to fill their vacancies by appointment as provided in this section, one judge who shall be judge of the county court of such county, whose term of office shall be four years and whose salary shall be fixed by law. Whenever a vacancy shall occur in the office of the county judge in any county having a population of more than one hundred thousand inhabitants or in any county which by election has adopted the provisions hereof, the Governor shall fill such vacancy by appointing one of three persons possessing the qualifications for such office who shall be nominated and whose name shall be submitted to the Governor by a nonpartisan committee selected from within the county in the manner prescribed in Section 10 of this Article. A county shall be considered a district for the purpose of appointing the committee as prescribed in Section 10 of this Article. The incumbent county judge in such counties may apply to the election authorities for re-election as provided in Section 5A of this Article.

"Section 15A. At any general election the qualified votors of any county having a population of not more than one hundred thousand inhabitants, may by majority of those voting on the question elect to have the judge of the county court therein appointed by the Governor in the manner provided for the appointment of county judges in Section 15 of this Article. The Legislature may provide the manner in which the question shall be submitted to the voters."

In order to place these proposed amendments on the ballot at the general election to be held November 2, 1954 it is necessary that no less than 59,572 signatures be obtained on the petitions, which must be filed

with the Secretary of State on or prior to July 1, 1954. The signatures to be obtained must comply with Sections 2 and 4 of Article III of the Constitution, and Chapter 32, Article 7 of R. R. S. Nebraska 1943.

The legislature has prescribed the general form of the petition for this purpose. Your committee attaches to the original of this report a form of petition which follows the prescribed form. The form will not be printed in the Bar Association program because it would unnecessarily increase its printing cost. A copy of the form is attached to the original report and members of the bar can inspect it either at the office of George H. Turner or at the office of any member of the committee.

The committee wishes to express to Mr. Wilber Aten, co-ordinator appointed by the Executive Council, its appreciation of his services. He has not been co-ordinator in name only but has actively cooperated with us.

The committee also wishes to express its appreciation of the work of the members of the Nebraska Committee, Section of Judicial Administration of the American Bar Association, who have been invited to each meeting of our committee. Messrs. Kenneth H. Dryden, Chairman, H. F. Mayer and Judges Delehant, Yeager and Kuns have attended one or more meetings. To each of them we wish to express our appreciation for their valuable suggestions.

Your committee feels that to secure the adoption of the proposed constitutional amendments, which we propose to call the Merit Plan (a name first suggested by our President, Laurens Williams) for Selection of Judges is only the first in a series of steps which our Association should take.

We recommend to the Association that measures be formulated by next year's committee for presentation to the 1955 session of the legislature providing for a salary of $15,000 per year for judges of the Nebraska Supreme Court, and either $10,000 or $12,000 per year, as the committee determines, for judges of the District Courts of Nebraska and that an adequate retirement plan be provided for the judges of both courts. The present committee has been studying the matter of adequate salaries and of a retirement plan but feels that more time should be given the matters, and that the recommendations should be presented to the Judges before action is taken by the Association. We therefore propose that the matter of judicial salaries and retirement should be referred to next year's committee for further study and for a report at the annual 1954 meeting.

ROBERT VAN PELT, *Chairman*
WILBER S. ATEN, *Co-ordinator*
ROBERT H. BEATTY
H. L. BLACKLEDGE

RAYMOND M. CROSSMAN, JR.
GEORGE L. DELACY
L. RAYMOND FRERICHS
NATE HOLMAN
RICHARD E. HUNTER
CHARLES E. MCCARL
ROBERT D. MOODIE
JAMES G. MOTHERSEAD
EARL J. MOYER
MILTON A. MILLS, JR.
LLOYD L. POSPISHIL
JAMES C. QUIGLEY
ALBERT T. REDDISH
ALBERT G. SCHATZ
CLARENCE T. SPIER
JOSEPH A. TROIA
DEAN WALLACE

PRESIDENT WILLIAMS: Next, the report of the Committee on Administrative Agencies, Mr. Chauncey Barney, Chairman, Mr. Barney!

CHAUNCEY E. BARNEY: Mr. President and Members of the Association: This report will also proceed on the President's assumption, not that all of you have read the report of the committee.

The bulk of the committee's report is concerned with the reporting of legislative enactments and developments on the state and national level during the past year. It seems to me that the most significant portion of the report is that concerned with the reporting of the appointing by President Eisenhower in April of this year of a President's Conference on Administrative Procedure. This has been an area that has been a troublesome one for many years, and the activity has the endorsement of the American Bar Association, the Attorney General, the Judicial Conference of the United States, and has as its Chairman Circuit Judge Prettyman of the U. S. Court of Appeals. The Conference has been organized, is under way, and some considerable results are expected of the Conference on a national level.

It has seemed to your committee that a parallel activity on the state level could have some merit. It has been, unfortunately, the experience too many times that recommendations of this Association by and through its committees have been torpedoed so far as legislation is concerned by persons actually a part of various agencies right in the State House who live with the subject matter and perhaps are more voluble or better informed than the members of our own Bar.

It thus seemed to us that a Governor's Conference, composed of members of the Bar, representatives from each of the executive and administrative offices in the State House dealing with the problem,

members of the Bench, could have a lot more weight and could develop a better program than any committee of either the Bar, or the legislature, or the Judicial Council, or the executive agencies standing alone.

If you adopt this report, and if you concur in that recommendation, I want to point out one other thing to the members of the Association. It is almost impossible, of course, to discover until factual situations arise, the various points in any administrative procedure which are not governed by adequate rules of practice. It is therefore desirable that individual members—that is, each of you—who discover blind spots in the administrative process in the course of your practice relating to procedure, adequate hearing, or review, call those matters to the attention of the committee of this Association or, if formed, the Governor's Conference.

Mr. President, I move the adoption of the report of the Committee on Administrative Agencies.

PRESIDENT WILLIAMS: Is there a second?

ROY E. BLIXT (Arnold): I second the motion.

PRESIDENT WILLIAMS: Comment? Discussion? Are you ready for the question? All in favor of the motion say "aye"; those opposed say "aye." The motion is unanimously carried.

Report of the Committee on Administrative Agencies

Your Committee on Administrative Agencies desires to report as follows:

This committee was activated during the past year after a lapse of two years, the last committee having reported in 1950. That committee left as unfinished business the possible drafting and enactment of a uniform statute covering appeals from administrative tribunals. A comprehensive study was reported and the study and recommendation of the Judicial Council requested. To the knowledge of your committee, no such action has yet been taken by the Judicial Council.

Your current committee was appointed too late to do anything about securing uniform practice or other legislative change by act of the 1953 Legislature, and therefore confined its efforts to the consideration and reporting of matters of interest in this field on the local and national level to the end that our successors may have the benefit of a place of begining in their activity.

On the State level, two laws, upon which individual members of your committee were active, were enacted, both of which are in line with the Association's announced purpose of "improving administrative procedures." The first is L. B. 325 which eliminated the County Assessor as a member of the County Board of Equalization. Obviously, proper administrative concept forbids such an officer from sitting on a board of appeal where the issue is the propriety of his original finding. The Legislature agreed and in the future you will meet the As-

sessor as an antagonist before the Board of Equalization, rather than as judge of his own action.

The second enactment of interest is L. B. 74 which amended the "Rules of Administrative Agencies Act" originally passed in 1945 by requiring public notice and hearing of the adoption, amendment or repeal of any rule of a state agency. The act further provides for the approval of the Governor, (except in the case of the Railway Commission rules), and final review at each regular meeting of the Legislature. This enactment would seem to put to rest, in Nebraska, any continuing fears about serious abuse of the rule-making power of state administrative agencies.

On the national level a significant development in this field has been the calling by President Eisenhower, on April 29, 1953, of the President's Conference on Administrative Procedure. The Conference has the endorsement of the American Bar, the Judicial Conference of the United States and the Attorney General, and has as its Chairman, Circuit Judge Prettyman, of the U. S. Court of Appeals. The announced purpose is to call into conference, representatives of the executive departments, administrative agencies, the judiciary and the bar that they might "exhange information, experience and suggestions and so to evolve by cooperative effort, principles to be applied and steps which might be taken severally by the departments concerned." The conference has met and is proceeding.

It is the feeling of the committee that a parallel activity in the State of Nebraska has merit. Such a broadly constituted conference would have available more information, and its considered judgment have correspondingly more weight than any committee of this bar, the judiciary, the Legislature, or the administrative agencies standing alone.

It would seem that the presence in the Governor's office, at this time, of a member of the bar with experience in the field of governmental administration would further recommend the probability of concrete results of such a conference. Drawing as it may upon the collective experience of the administrative agencies, the bench and the bar, such a conference can produce concrete recommendations which will promise practical assistance to the agencies, the lawyers and to the Legislature in dealing with the problems of this field.

..Your committee therefore recommends that this Association urge the Governor of the State of Nebraska to call a Governor's Conference on Administrative Procedure to be composed of representatives of all state executive departments, administrative agencies, the courts and the legal profession.

Respectfully submitted
CHAUNCEY E. BARNEY, *Chairman*
PAUL P. CHANEY, *Co-ordinator*

JOHN R. COCKLE
FRANK J. GIVEN
JACK W. MARER
THOMAS F. NEIGHBORS
EDWARD R. SKLEICKA
RICHARD W. SMITH
DAVID D. WEINBERG
JOHN J. WILSON

PRESIDENT WILLIAMS: The report of the Committee on Oil and Gas Law, Floyd Wright, Chairman.

FLOYD WRIGHT: Mr. President and Members of the Association: The report of this committee commences on Page 29 of the program. There has been very little work for the committee to do during the past year, but due to the continued oil and gas development in the state, it is the recommendation of the committee that the committee be continued for another year.

Mr. President, I move the adoption of the report.

PRESIDENT WILLIAMS: Is there a second?

PAUL MARTIN (Sidney): I will second the motion.

PRESIDENT WILLIAMS: Is there any discussion? All those in favor say "aye"; those opposed, the same sign. It is unanimously carried.

Report of the Special Committee on Oil and Gas Law

The principal concern of this committee has been with legislation dealing with oil and gas. At the time of the appointment of the committee there was then pending in the legislature three bills. One, a bill authorizing a judge of the district court, in chambers, to authorize the execution of an oil or gas lease by an estate, trust or guardian; two, a bill authorizing the governor of the state to join in an inter-state compact to conserve oil and gas; three, a bill to provide for the condemnation of underground storage space for natural gas.

The first of these bills was suggested by the previous committee on oil and gas law, and there was no controversy as to the merits of any of the three bills, all of which were passed and approved, and are now the law of the State.

In view of the continued oil and gas development in the State, it is the recommendation of the committee that this committee be continued.

FLOYD E. WRIGHT, *Chairman*
PAUL L. MARTIN, *Co-ordinator*
AUBURN H. ATKINS
ARTHUR O. AUSEROD
GERALD J. MCGINLEY
DANIEL MONEN, JR.

WENDELL E. MUMBY
O. E. SHELBURN
S. E. TORGESON
IVAN VAN STEENBERG
ARCHIBALD J. WEAVER
JOHN H. WILTSE

PRESIDENT WILLIAMS: The report of the Special Committee on Tort Claims Act, George Healey, Chairman. Mr. Healey!

GEORGE HEALEY: Mr. President, the report of the committee appears on Page 26 o fthe program. The committee feels that the morality of the state in these times demands that it should submit itself to judicial determination for liability for tortious acts of its agents, and that the fairness to both the taxpayer and the injured citizen can only be accomplished by a judicial determination of damages rather than a parceling of damages by political or administrative means.

I therefore move that the report of the committee be adopted and that the President of the Association appoint a new committee to further the action which has so far been taken.

PRESIDENT WILLIAMS: Is there a second?

JUDGE HARRY A. SPENCER (Lincoln): I will second the motion.

PRESIDENT WILLIAMS: Is there any discussion? All in favor say "aye"; all opposed, same sign. The motion is unanimously carried. Thank you.

Report of the Special Committee on the State Tort Claims Act

Subsequent to the last general meeting of the Association, members of your Committee met with various other persons who were interested in the Tort Claims Act, and particularly, with members of the Attorney-General's office. After various conferences, L. B. 334 was drafted by the bill drafter.

This bill was heard before the Committee on Judiciary on March 25, 1953, and members of this Committee and others, appeared before such Committee on behalf of the bill. The Attorney-General's office likewise supported the bill, but objection was strenuously made by one of the attorneys of the State highway department. Subsequently the bill was reported out by the Judiciary Committee to General File. May 19, 1953, Senator Hubka proposed certain amendemnts to L. B. 334 which considerably changed the plan of the bill, but particularly contained an amendment to provide that the Attorney-General, for the administration of such act, would receive an increased salary of $2500 a year. The amendments were adopted and on the same date a motion for indefinite postponement prevailed with 23 "Ayes," 17 "Nays" and 3 "not voting."

It is the recommendation of this Committee that a further effort be made to obtain the ultimate adoption of some satisfactory tort claims act for Nebraska, patterned as nearly as may be practical after the provisions of L. B. 334 which, to some extent, followed the Federal Tort Claims Act.

GEORGE HEALEY, *Chairman*
DANIEL J. GROSS
EARL CLINE
GUY C. CHAMBERS
JAMES A. LANE
H. H. MCCOWN
MILTON MURPHY
FRED DEUTSCH
JOHN C. COUPLAND

PRESIDENT WILLIAMS: The report of the Committee on Crime and Delinquency Prevention, Mr. Robert A. Nelson, Chairman. Mr. Nelson!

ROBERT A. NELSON: Mr. President and Members of the Association: Your Committee has spent considerable time on the preparation of this report. We held three meetings of the Committee and in the meantime the individual members spent a great deal of time in securing the information which resolved itself into our report.

Without attempting to detail the matters, I do want to make a couple of comments. With reference to the matter of probation, this subject was considered by the District Judges at their last meeting, and we attempted to ascertain from them—although I don't think they took any specific action—the general thinking of the District Judges, and I believe that the recommendations contained in our report are generally concurred in by the District Judges. We have a very antiquated system of probation and certainly it should be remedied.

On the duties of the county attorneys and state law enforcement, it was the feeling that greater aid should be given county attorneys in the matter of investigation and detection of major crimes. With reference to that subject I might state that our recommendations are in line with the suggestions made by the American Bar Association.

Mr. Chairman, I move the adoption of the report.

PRESIDENT WILLIAMS: Is there a second?

RALPH S. MOSELEY (Lincoln): I second the motion.

PRESIDENT WILLIAMS: There are several recommendations in this report. Do you have any discussion or comment ?

WILLIAM G. WHITFORD (Madison): Mr. Chairman, I question the desirability of this recommendation that a psychiatrist should be available for medical examination of an offender in a case of unusual importance when his mental capacity is in doubt.

The reason I question that is this: About six months ago a man was brought in to me for arraignment, inferior court arraignment. His

counsel and the county attorney stipulated and jointly asked me to send him to Norfolk to the state hospital for examination. I did, with the specific instruction that they should determine and give me an opinion as to whether or not this man had the mental capacity to know right from wrong. Five months later we got him back with the statement that in their opinion, while he had emotional disturbances, he did know right from wrong. I am wondering why it takes a psychiatrist five months to determine whether a man has the mental capacity to know right from wrong. I am wondering if the psychiatrists are being of any help to us.

CHAIRMAN NELSON: I think it was the thought of the committee that the psychiatrists, especially in our state hospitals, should be available for such examination. It was also the feeling that the judge should have authority in cases where he considered such an examination advisable, to commit for the purpose of examination, and in order to report to the court. Judges feel at various times that they should have that information before they proceed with the matter. That was the thought we had in mind. We didn't attempt to specify any of the details, as we didn't think that was the function of our committee. That is a matter that would have to be worked out by the legislative committee in preparation of the proper law.

DONALD H. WEAVER (Grand Island): We of Grand Island use that system and it averages twenty-one days to thirty days. I think it is very valuable, and I think it is an item that should be in there.

PRESIDENT WILLIAMS: Any other discussion. If not, all those in favor say "aye"; those opposed, same sign. It is unanimously carried.

Report of the Committee on Crime and Delinquency Prevention

Your Committee on Crime and Delinquency Prevention reports:

PROBATION

Probation provides our greatest opportunity for crime prevention and relates to both adults and juveniles. It is much cheaper to correct a probationer than to maintain a prisoner. Our study reveals that Nebraska is not sufficiently availing itself of the economic and humanitarian advantages of a modern probation system.

Our probation law contained in sections 29-2209 to 29-2220 of the Revised Statutes was enacted in 1913. No material changes have been made in the law since that time. Section 29-2210 provides that in counties having a population of sixty thousand or less, the probation officer shall be appointed by the judge of the county court, who is often a layman. Section 29-2209 provides that any parole officer, constable or other peace officer may be appointed probation officer. Section 29-2214 provides that in counties having a population of twenty thousand or less the sheriff shall perform all duties of probation officer unless

the county board authorizes the county judge to appoint some other person to perform such duties.

Law enforcement officers are not effective probation officers. Their visits to the probationer embarrass him and make rehabilitation difficult. Experts disapprove of the appointment of sheriffs or police officers as probation officers. No adequate funds are provided for employment of competent probation officers in most counties of the state, and the result is that the courts are required to commit many persons who might otherwise be rehabilitated.

Your committee recommends the enactment of legislation creating a state probationary system, the cost of which will be borne by the state instead of by the individual counties. Probation officers should be made available for supervising adult and juvenile offenders. They should be trained to identify causes of anti-social behavior, to counsel the offender, to report to the court, and to suggest what conditions of probation appear most likely to correct the offender.

Your committee further recommends that psychiatrists in the state hospitals be available for mental examination of offenders in cases of unusual importance when their mental capacity is in doubt, and that the courts be given authority to commit temporarily for the purpose of such examination.

STATE LAW ENFORCEMENT

Your committee considered the problems of the county attorneys in Nebraska and the numerous duties imposed upon the office, such as criminal prosecutions, prosecution and defense of civil cases in behalf of the county, acting in an advisory capacity to the county board and all other county officers, the old age assistance board and case workers on county projects, acting as county coroner, acting as their own investigating agency in all criminal and civil cases, preparation and prosecution of all tax foreclosures, investigation of all matters involving determination of inheritance taxes, and, although not required by law, acting as a free legal aid clinic for indigent persons.

The county attorney is one of the most important officials in our form of government. The public demands, and rightly so, that efficient and capable men fill this office. Each session of the legislature adds additional duties to the office and under our present scale of living it is impossible for a county attorney to efficiently and conscientiously perform all of the duties devolving upon him and still have time to handle his private practice so that he can earn a living wage.

Your committee recommends that the salary of county attorneys be made commensurate with present day living costs and the duties which they are required to perform, with provisions for part time paid deputies in the smaller counties.

In the investigation and trial of major felony cases, the county attorney is often seriously handicapped because of a lack of proper facilities and a lack of properly trained personnel to aid in the investigation. In these cases, your committee believes that the services of the Department of Justice and the State Criminal Bureau should be made available whenever the county attorney determines that such assistance is necessary. This would be a material aid to the county attorney in the performance of his duties.

In order that such services may be more efficiently and effectively given, it is believed that the State Criminal Bureau should be placed under the jurisdiction of the Department of Justice.

Your committee, therefore, recommends that the State Criminal Bureau be transferred to and made a part of the Department of Justice.

STATE CORONER

Last year this committee recommended that provisions be made for the state to employ at least a part-time pathologist who would be available to all counties to perform autopsies and give general assistance to county attorneys in cases where there is some evidence or suspicion that a death was not due to natural causes. We concur in that report.

It is the recommendation of this committee that a trained medico-legal investigator be made available who would be on call to any county in the state to supervise the investigation of a violent or unknown death.

ATTORNEYS COOPERATING WITH CRIMINALS

The American Bar Association Commission on Organized Crime in its report to the American Bar Association, dated September 21, 1952, said in part:

> "Suspicion is voiced that lawyers are on the payrolls of gangsters, that they act as fronts for gangsters in patently illegal deals, that they appear on a retainer basis not only for the gangsters themselves but for their underlings in gambling syndicates. The constant appearance of the same group of lawyers who handle the majority of cases of known racketeers also gives rise to suspicion that they are under a retainer to these gentry and that they are somehow able to influence by unethical methods the course of criminal prosecution. Our correspondents express frequent criticism of the actions of lawyers with respect to the procuring of bail-bonds, and with respect to the solicitation of clients in police stations."

Further it was stated in the same report:

> "But there is considerable opinion that not enough action has been taken against lawyers involved in these kinds of situations, either by courts or by bar associations."

(Vol. 77, Reports of American Bar Association, 1952, page 328).

This committee last year recommended that full cooperation be given the American Bar Association in developing facts and formulating the methods to deal with lawyers guilty of unethical practices, that local bar associations be urged to report any violations in their communities, and that this matter be given further study.

This committee is without adequate information to formulate any definite conclusions on this subject at this time. However, it is the opinion of the committee that it is imperative that lawyers be vigilant at all times to keep their house in order. *Therefore, it is recommended that the Nebraska State Bar Association authorize and direct this or some special committee to make a survey seeking information of the extent of unprofessional conduct by lawyers in Nebraska, to learn the effectiveness of existing procedure to deal therewith, to explore the possibility of improving such procedure, and to report findings to the State Bar Association.*

Further, your committee recommends that copies of this report be referred to the legislative committee of this Association and to the State Legislative Council.

ROBERT A. NELSON, *Chairman*
PAUL H. BEK, *Co-ordinator*
HERBERT A. RONIN
MILTON C. MURPHY
THEODORE L. RICHLING
THOMAS J. DREDLA, JR.
CECIL S. BRUBAKER
HARRY N. LARSON
ROBERT V. DENNEY
DONALD E. WILLIAMS
HARVEY M. WILSON
HUGH STUART
RICHARD H. WILLIAMS
JOHN W. NEWMAN, JR.
ROBERT C. MCGOWAN
JOHN E. DEMING

PRESIDENT WILLIAMS: Next is the report of the Special Committee on Litigation With American Arbitration Association, William J. Hotz, Chairman.

WILLIAM J. HOTZ: If you will turn to Page 27 of your program, you will find there stated about everything that needs to be known. The litigation has been ended against the American Arbitration Association. The Supreme Court of the State of Nebraska has held that the contracts to arbitrate sponsored by the American Arbitration Association are non-enforceable for any purpose in the State of Nebraska. The American Arbitration Association has closed its offices in this city,

discharged its manager, and filed an answer in the case so stated. Consequently, we did not feel that there was anything further to litigate.

There was a proceeding that took place at the time of the dismissal that has been transcripted, and I am furnishing our reporter with a copy of that, so that anyone in the future may determine exactly what the facts and the situation were in connection with our procedure.

I want only to admonish the members of this Association that the American Arbitration Association is indeed a challenge to the judicial branch of our government. The encroachment that is being made elsewhere than in the State of Nebraska deserves your attention.

I therefore, move the adoption of the report and recommend in connection with it that the standing committee on the Unauthorized Practice of Law continue its vigilance in connection with the activities of the American Arbitration Association.

STERLING F. MUTZ (Lincoln): I will second the motion. In doing so I would like to request that the members who are within my hearing read the November issue of *Reader's Digest,* Page twenty-four, under the title "How to Avoid a Lawsuit." Quoting, "It is probably the most elastic judicial system ever devised," and on the next page it shows that a lawsuit involving four million dollars was determined, a judicial decision was rendered, at a total cost of $507.00.

If you haven't read that, you better read it and then thank Bill Hotz and his committee for having kept them out of Nebraska.

PRESIDENT WILLIAMS: The Chair will recognize Mr. Joseph Tye who will speak on behalf of the Executive Council.

JOSEPH C. TYE (Kearney): Mr. President, it is the wish of the Executive Council of your Association that a report be made at this time for the record, since we fear that the record of the Association may be somewhat confusing.

The meetings of the membership which have acted upon this subject have been sparsely attended. A few at the last annual meeting voted to continue this litigation, following Mr. Hotz' report—something less than twenty members were present, another reason for your change in the organization of this Association.

Because of the fact that this litigation was commenced pursuant to action of the membership, and because of the fact that following that time your Executive Council recommended upon two occasions that the litigation be dismissed, your Executive Council is fearful that some of the members, at least, who have not been in regular attendance at these meetings, may feel that the Executive Council is refusing to abide by and to recognize the action of the membership. Certainly the Executive Council does not wish any such impression to be borne by the members of this Association.

In view of that situation, we also wish the record to show that after your Executive Council recommended dismissal of the litigation, you, the membership of this Association, overruled us and voted to continue the litigation. At the last annual meeting you, the members of this Association, voted to continue the litigation and directed that this lawsuit should be tried, even though your Executive Council—following a hearing at which members representing the American Arbitration Association appeared and Mr. Hotz appeared representing you the members of the Association—recommended otherwise. Without discussing the merits or the issues of it, I wish to say only that the suit was moot at that time, and again the Executive Council felt that the litigation should be dismissed, that our purpose had been served; but the membership said to continue with the litigation.

Now, in order that the record may be clear, gentlemen, we want it to show that the Executive Council ordered and directed that the litigation continue. The committee, without consulting or advising any of the officers of the Association or the Executive Council, dismissed the litigation. Now, we have no quarrel with them about it because, as you well recognize, it confirmed our considered judgment before. But we do want the membership to know how it was done and that the Executive Council did not—if I may say so—kick you in the teeth. For that reason, therefore, we wish that the membership at this time would approve the report and would ratify the dismissal of the lawsuit.

In so doing, we wish to refer to a letter by a former secretary, I believe, of this Association, an illustrious member, Dean Roscoe Pound, in which he made some comments upon this subject, and we offer the copy for the record. But we do request that you approve the report and that you ratify the action of the special committee in dismissing the litigation.

PRESIDENT WILLIAMS: I wonder, in order to keep the record straight —since we seem to be worrying about the record—if you would mind enlarging your motion, Mr. Hotz, so as to make this a complete ratification of dismissal of the action, if there is any question about it.

CHAIRMAN HOTZ: Well, generally, yes. I don't know anything about Roscoe Pound's letter. He didn't have anything to do with the litigation, nor does he know what happened out here in Nebraska.

PRESIDENT WILLIAMS: I don't understand that Dean Pound's letter is involved in the motion.

CHAIRMAN HOTZ: With all due respects to Roscoe Ponud.

PRESIDENT WILLIAMS: May we have the consent of the second to the change in the motion?

MR. MUTZ: Yes.

PRESIDENT WILLIAMS: Now is there any further discussion of the motion? Hearing none, are you ready for the question? All those in

favor say "aye"; those opposed, same sign. It is unanimously carried and is so ordered.

Report of the Litigation Committee on the Unauthorized Practice of Law

Early in 1948 the committee on the unauthorized practice of law became aroused by the activity and promotion literature of the American Arbitration Association. After examination of the literature, many conferences with the manager of the Omaha office, and innumerable committee meetings, it became more and more apparent that the American Arbitration Association was not a beneficial organization for either the public or the Judicial Branch of our government, because it offered its facilities to settle justiciable issues.

During the past years pleadings were filed in the Supreme Court of Nebraska to have the arbitration association adjudged guilty of contempt for the unauthorized practice of law. The previous annual reports made to the Bar have detailed these various steps year by year.

Finally, on October 6, 1949, the case of Nebraska State Bar Association v. American Arbitration Association and Harry J. Andrews, its manager, Doc. 425 No. 50, was filed in the District Court of Douglas County, Nebraska. This was an injunction proceeding. While the issues were being made up, two cases were decided by the Nebraska Supreme Court which were favorable to the Bar Association's position and were directly adverse to the American Arbitration Association's position.

(1) In *Wilson & Company, Inc. v. Fremont Cake & Meal Co.,* (1950), 153 Neb. 160, 43 N. W. 2d 657, the court held that the contracts for arbitration sponsored by the American Arbitration Association were invalid and nonenforceable in Nebraska for any purpose, regardless of the provisions of Title 9, U. S. C. A., requiring recognition of an arbitration contract by the federal courts in diversity cases. Certiorari was denied by the United States Supreme Court in this case in October, 1951 (252 U. S. 812, 72 S. Ct. 25). Thus, the contracts of the defendant to arbitrate were held void and nonenforceable in Nebraska.

(2) In June, 1952, in *Cornett v. State,* 155 Neb. 766, 53 N.W.2d 747, the Supreme Court held that it alone had the authority to define the unauthorized practice of law and to punish for any violation.

Consequently, the dilatory tactics employed in our suit by the American Arbitration Association permitted two decisions to be made by our Supreme Court which adjudicated the Bar Association's position and made trial unnnecessary.

Also, after the Nebraska State Bar Association's suit was filed and service had in October, 1949, the defendant withdrew from the state and closed its offices in the W.O.W. Building in Omaha. It alleged this

withdrawal in its answer filed January 25, 1952. In view of the withdrawal from the state and the two above-cited cases, the committee felt that further expense of gathering evidence and trying the case became unnecessary. Consequently, based upon plaintiff's motion reciting the foregoing facts, an order of dismissal was signed and entered on March 19, 1953. After this order was signed and entered, the arbitration association filed a motion objecting to the form of the order of dismissal.

The arbitration association wanted the entry to be merely "dismissed," while the committee in charge of the litigation believed that the recitals in the Bar Association's motion to dismiss should remain in the order as signed and entered. The arbitration association no doubt assumed that if a mere entry of a dismissal at plaintiff's costs appeared of record, the arbitration association could advertise that the Nebraska Bar Association dismissed its case for reasons other than the recited grounds.

The purposes of the litigation were accomplished by the defendant's contracts being held void and by the defendant organization's withdrawal from the state. Consequently, no reason existed for further expense to try the case.

The case is concluded for all purposes. The recorded motion and order show the facts and the law that prompted the dismissal.

WILLIAM J. HOTZ, *Chairman*
JOSEPH C. TYE, *Co-ordinator*
ROBERT W. HANEY
CHARLES LEDWITH

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

THE STATE OF NEBRASKA, ex rel., Nebraska State Bar Association, Inc., Plaintiff, v. AMERICAN ARBITRATION ASSOCIATION, an association organized and existing under the laws of the State of New York, and HARRY J. ANDREWS, Manager of the Omaha Office thereof, Defendants.	DOC. 425 MOTION TO DISMISS	NO. 50

Comes now the plaintiff, and moves the Court to dismiss the above-entitled cause without prejudice at plaintiff's costs, for the reasons and upon the grounds set forth in the transcript of proceedings had before this Court and duly transcribed and certified by L. L. Turpin, official

court reporter within and for the Fourth Judicial District of Nebraska, to which transcript reference is made and incorporated in this Motion as a part hereof.

Dated February 7, 1953.

THE STATE OF NEBRASKA, ex rel.,
Nebraska State Bar Association, Inc.,

By s/William J. Hotz
Of Hotz & Hotz
1530-5 City National Bank Bldg.
Omaha, Nebraska

By s/Robert W. Haney
Of Pilcher & Haney
1405 City National Bank Bldg.
Omaha, Nebraska

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

The State of Nebraska, ex rel. Nebraska State Bar Association, Inc. Plaintiff. v. American Arbitration Association, an association organized and existing under the laws of the State of New York, and Harry J. Andrews, Manager of the Omaha Office thereof. Defendants.	Doc. 425	No. 50

—APPEARANCES—

FOR PLAINTIFF: Mr. William J. Hotz, Sr., of Hotz & Hotz, Omaha, Nebraska, and Mr. Robert W. Haney, of Pilcher & Haney, Omaha, Nebraska.

FOR DEFENDANTS: Mr. Seymour L. Smith, of Smith & Smith, Omaha, Nebraska.

TRANSCRIPT OF PROCEEDINGS HAD BEFORE

HON. JACKSON B. CHASE, FEBRUARY 7, 1953

MR. HOTZ: If Your Honor please, last night when we closed there was some informal ruling on the matter to suppress, and I am wondering if the Court is of about the same opinion as he was last night.

THE COURT: I haven't had an opportunity to go over it yet. I started to check the statutes, but haven't got clear through them yet.

MR. HOTZ: If Your Honor please, we may relieve the Court of some responsibility in this lawsuit, and I should like to make a statement to the Court and we will preface our remarks by stating that it is our intention to dismiss this case without prejudice.

In order to have a record here that can be used, I will say that we are withdrawing our motion to suppress the taking of depositions and we are also withdrawing our motion in reference to the jurisdiction of this Court and the jurisdiction of the Supreme Court.

Ordinarily it is not necessary for counsel to give reasons for the dismissal of a case without prejudice but here as elsewhere the matter is purely statutory and it is within our rights to do so. We have the Bar Association, of which we are all proud, as our client, and it is the State of Nebraska that is the plaintiff in this action on behalf of the Nebraska State Bar Association.

I wish to call the Court's attention to the fact that in 1946, on October 5th, we filed on behalf of the Plaintiff in this action an information affidavit and a motion for citation for contempt of Court against the defendant American Arbitration Association. That was filed in the Supreme Court of the State of Nebraska and in an informal hearing there the Court suggested that the matter should go into an equity court in the District Court of Douglas County, Nebraska, where the American Arbitration Association had an office in the WOW Building in Omaha, Nebraska at that time. Their suggestion was that it should be in the form of injunctive relief rather than contempt proceedings. Accordingly this action was filed in this court, I think on October 6, 1949. At that time process was served upon the American Arbitration Association in its office here, and upon their duly authorized agent, and since 1949 the issues have been made up. It has taken some time. There were motions filed, but finally the defendant did answer and the plaintiff in the action filed a reply. The issues were finally made up only in 1952, when the reply was filed. I think the answer was filed either late in 1951 or in early 1952. In the answer that was filed by the defendant there appears the following statement on Page 9 of the answer paragraph 15.

"During the period from on or about February 1, 1941 to on or about November 1, 1950, when the Association's office in the City of Omaha was closed and discontinued, only four motion picture claims or controversies were submitted to arbitration in the Arbitration Tribunal maintained by the Association in Omaha, Nebraska."

In other words, since the action was filed and service was had upon the defendant asking for injunctive relief against them, or restraining and enjoining them from what the petition alleged was the unauthorized practice of law, and from practicing law without a license, the

defendant has closed its office in the City of Omaha and has discharged their manager defendant and they are no longer mainting an office within this State.

Also since this case was filed the Supreme Court of the State of Nebraska, in the case of Wilson & Company, Inc., against the Fremont Cake and Meal Company filed an opinion, which I shall not read except the Syllabi 2 and 3. Those syllabi are as follows:

"2. ARBITRATION AND AWARD: Courts. Where arbitration constituted a part of the contract between parties to it and an attempt is made to enforce arbitration by invoking the Federal Arbitration Act, in the courts of this state the issue is one of procedure and not of substantive right, and the laws of this state are controlling."

"3. ARBITRATION AND AWARD: Contracts. In this jurisdiction a provision in a contract requiring arbitration, whether of disputes arising under the contract generally, or only of the amount of any loss or damages sustained by the parties thereto, will not be enforced; nor will refusal to arbitrate be available in an action growing out of the contract."

That case is found in 153 Neb. at Page 160, and N.W.2nd at page 657, the opinion having been filed July 24, 1950.

In that case, if it is read, it will be found that the American Arbitration Association contract for arbitration was in issue before our Supreme Court, and as we understand the decision it settles the controversy in connection with the validity of such a contract in the State of Nebraska. It is no longer questionable here. An effort was made at certiorari from the Nebraska decision to the Supreme Court of the United States and the substance of the action was related in the petition for certiorari, filed April 13, 1951, and in that petition to which reference is made, Case No. 28, October Term, 1950, Fremont Cake and Meal Company, a corporation, Petitioner, versus Wilson & Company, a corporation, Respondent, it will be found that the Defendant's chief reliance upon getting to the high court was based upon the fact that they were engaged in a business that was interstate. In other words, their contracts were sent out here from New York, perhaps signed by someone in Illinois and then sent into Nebraska and signed perhaps by someone here, or if not signed here in Nebraska they were to be enforced in this state, and therefore they were not subject to state control. The Supreme Court of the United States denied certiorari and they did not get very far. It was considered a local proposition for the State of Nebraska, and it was denied, and we respectfully urge anyone interested to verify that which has been said here, by the records and files in the case to which reference was made.

Now we then are confronted with the proposition in the answer that I have just read, and that is that this defendant corporation had withdrawn its office and its manager here, and even though service was had

on them they are no longer doing business in this state through their local office. Under those conditions, no matter what court tries the matter ultimately and finally, the Court would be confronted with the proposition of whether or not an injunction could or could not be granted against something that no longer exists. It then would be up to the plaintiff in this action to seek to determine whether or not the American Arbitration Association was doing business within this state, and we would run on to the decision that I have just read in Nebraska, that even though they were, the contracts were of no value, unenforceable and void in this state, and so an equity court might find some difficulty in the enforcement of an order against a corporation alleged to be practicing law without a license and engaging in the unauthorized practice of law when that corporation is not here within the jurisdiction of this Court.

Where the American Arbitration Association is not a party to the suit at all,—I mean there is a lawsuit between Smith and Jones, who had signed a contract which was prepared by the American Arbitration Association, in which those parties agree to use the facilities of that association in the settlement of disputes, and when that association pulled out of the State of Nebraska where the dispute is to be settled, we had a new problem as to whether or not the Court could restrain or enjoin something that does not exist, which may have existed at the time the suit was filed, but is not in existence now.

We came to another problem on which we base the final conclusion that Mr. Haney and myself arrived at after a lot of thought, and that is the case of Cornett versus State, 155 Nebr. 766; 53 N.W.2nd, 747, decided on June 6, 1952. Now in that case we find an expression by the Court that is very clear, in which it states that the Supreme Court of the State of Nebraska alone has the power to define and determine what is the unauthorized practice of law, and to punish or take such action as might be necessary in reference thereto. I will read from Page 769 a short paragraph which I think covers it all.

"It is the contention of the defendant that the information charges him with a constructive criminal contempt in that he was practicing law without a license to do so and that such an offense is within the exclusive jurisdiction of the Supreme Court of this state. It cannot be questioned that the Supreme Court has the exclusive power to determine the qualifications of persons who may be permitted to practice law in this state and possesses the exclusive power to disbar licensed attorneys who have violated the trust reposed in them as such. It also has the inherent power to punish by contempt proceedings those persons who engage in the practice of law without a license to do so. Where the Legislature has not made the unauthorized practice of law a statutory crime, the Supreme Court has the exclusive power to punish those who practice law without a license. This is so because

the contempt is directed at the court having the exclusive power to define the practice of law, to determine the qualifications of persons to be admitted to the practice of law, and to disbar those admitted to the practice of law who have violated their trust. These conclusions are supported by the following cases: State ex rel. Wright v. Barlow, 131 Nebr. 294; 268 N.W. 95, and they cite the case of In re Integration of Nebraska State Bar Association, 133 Neb. 283; 275 N.W. 267; State ex rel. Johnson v. Childe, 147 Neb. 527; 23 N.W. 2nd 720." and they cite other cases.

In the Childe case the Court says:

"The power to define what constitutes the practice of law is lodged with this court. The sole power to punish any person assuming to practice law within this state without having been licensed to do so also rests with this court."

Then they go on to say:

"We necessarily hold that the district court for Douglas County was without jurisdiction to try the defendant on the charge of committing a constructive criminal contempt by engaging in the practice of law without having been licensed to do so."

That case is not, as we view it, absolute authority for the proposition that the District Court is without power to approach this in an injunctive proceeding, but in reviewing this case we were also confronted with its powers in connection with granting injunctive relief when the defendant is no longer here in the state and has closed its office for all intents and purposes.

In order to bring the matter to the Court's attention we did file a motion yesterday and that was a motion on which we had put in a good deal of time and thought. That was in reference to the concurrent jurisdiction of this court and the Supreme Court. The Supreme Court has original jurisdiction as defined by the Constitution, in matters where the State of Nebraska is a party. The State of Nebraska, ex rel The Nebraska State Bar Association is plaintiff in this case. We deemed it at least advisable to file a motion and ask this Court to rule upon the matter of whether or not it could transfer this case to the Supreme Court of the State of Nebraska by having the pleadings certified and sent down there, and our intention was to take such evidence as might be necessary for the purpose of giving the facts to the court upon which it could base its own decision, facts with reference to whether or not they constitute the unauthorized practice of law, or whether defendant was guilty or not.

However, if we went through that procedure and the Court would grant our motion, we still would be confronted with the other problems in connection with the injunctive proceedings and the other matters concerning which we have called to the Court's attention, so consequently this case may now be concluded by the plaintiff's motion

directed to this Court, and which is joined in after a great deal of thought by Mr. Robert H. Haney and myself, who have been designated by the Bar Association to handle this matter, for the dismissal of the case at this time without prejudice.

THE COURT: Have you filed a written motion to that effect, or are you making the motion now?

MR. SMITH: We will agree for the record that this motion for dismissal without prejudice, made in open court, is sufficient and that no written motion will be necessary. I take it that an order will now be entered to that effect.

THE COURT: How about the costs and the record?

MR. HOTZ: Well in every motion to dismiss, as I view it, the statute requires that the actual court costs, unless they are waived, are paid by the dismissing party. I think that is the statute is it not, Your Honor?

THE COURT: That is ordinarily done because otherwise it is conceivable that plaintiff can file any number of actions and put defendant to considerable expense.

MR. HOTZ: We didn't read into the record all of this just to hear ourselves talk. I would like to have this written up by Mr. Turpin and filed.

MR. SMITH: And I would like a copy of it.

THE COURT: Will you file a written motion and have this record attached as an exhibit?

MR. HOTZ: Yes.

STATE OF NEBRASKA }
COUNTY OF DOUGLAS } ss.

I, L. L. Turpin, an official court reporter within and for the Fourth Judicial District of Nebraska, do hereby certify that I reported in shorthand the proceedings had in the above entitled matter on February 7, 1953, and that the foregoing is a true transcript of said proceedings, as reported by me in shorthand, and as transcribed by me.

s/L. L. TURPIN

Law School of Harvard University

Cambridge 38, Mass.

J. Noble Braden, Esq.
American Arbitration Association,
9 Rockefeller Plaza,
New York 20, New York

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STATE OF NEBRASKA }
COUNTY OF DOUGLAS } ss.

I, L. L. Turpin, an official court reporter within and for the Fourth Judicial District of Nebraska, do hereby certify that I reported in shorthand the proceedings had in the above entitled matter on February 7, 1953, and that the foregoing is a true transcript of said proceedings, as reported by me in shorthand, and as transcribed by me.

s/L. L. TURPIN

Law School of Harvard University

Cambridge 38, Mass.

J. Noble Braden, Esq.
American Arbitration Association,
9 Rockefeller Plaza,
New York 20, New York

15; Kearney on December 16 and 17; and Omaha on December 18 and 19. We have a sign over here which indicates some of the subjects to be covered and the personnel appearing. One of the things we are going to emphasize this year is the tax problems arising from the development of the oil and gas industry in the State of Nebraska. Not all of you live in the area where the development of oil and gas is, but there are people all over the state who own land in that area, and one of them may be in your office tomorrow with an oil and gas problem. For that reason we thought that all members of the Nebraska Bar should be competent to consider those problems. We are fortunate to have Thomas O. Shelton, Jr., who is the Chairman of the Texas Bar Association's, Taxation Committee, and who is Chairman of the Southwestern Legal Foundation's Taxation Division, and a member of the Council of the American Bar Association Taxation Section. He will be here at Scottsbluff, at Kearney, and at Omaha. He and Laurens Williams will present the symposium on the oil and gas tax problems.

I don't believe any of you can afford to miss this Tax Institute. I think you should make it a point to spread the word to the members of the Association who are not here about the Institute and make sure you are there and bring somebody with you when you come. We would like to have a big attendance at this Tax Institute.

In addition, we will have Louis D. Klein of the Internal Revenue Service and the members of the Nebraska Bar who are listed on the announcement.

Other action of the Tax Committee has been to sponsor legislation to accomplish the recommendations of the 1952 committee relating to inheritance taxes and estate taxes. We secured the passage of L. B. 264 and L. B. 578. In passing L. B. 578 one recommendation of the committee was not included in the final form of the bill. It was the intention that L. B. 578 should still be subject to the apportionment act. It was not so expressly stated in our bill, and in our recommendation we have indicated that a further committee should give some consideration to a further amendment in that respect.

L. B. 264 required the Tax Commissioner to promulgate regulations for valuing life estates and remainder interests. The Committee on Taxation prepared a proposed draft of these regulations. We followed the federal form. The regulations have now been adopted by the State Tax Commissioner and will be effective December 1, 1953. They are being mailed to all county judges. At the time of the Tax Clinics we will have copies of these regulations available.

The committee considered further legislation in order to qualify the widow's allowance for the marital deduction by making it a vested interest, and to qualify the homestead interest in part for the marital deduction. We in our report have made certain suggested changes, if that is desirable, but we felt it was something that required further

consideration and have recommended that the successor to this committee consider those two problems.

The recommendations of the committee are as follows: (1) That the tax institutes be continued on an annual basis; (2) that future committees study the problem of improving the character of the programs at the institute so as to create greater interest in the Association and increased attendance at the institute; and (3) that the successor to this committee give further study to the advisabiliy of sponsoring legislation (a) to clearly state that Section 30-103.01 R. S. Sup. 1953 is subject to the apportionment act, and (b) to qualify the widow's allowance and homestead right for the marital deduction.

Mr. President, I move the adoption of the report of the Committee on Taxation as contained in the program.

PRESIDENT WILLIAMS: Is there a second?

H. HALE MCCOWN (Beatrice): I second the motion.

PRESIDENT WILLIAMS: Is there any discussion? If not, all those in favor say "aye"; all those opposed, the same sign. It is unanimously carried.

Report of the Committee on Taxation

The Committee on Taxation reports:

1. It conducted the Association's Annual Institute on Federal Taxation at Scottsbluff, Kearney and Omaha, between the dates December 8 and December 13, 1952. A substantial portion of the program was presented by the demonstration technique. It was the impression of the members of the committee participating in the institute that this type of presentation was successful and should be used for a portion of the program in the future.

No small part of the success of the demonstration technique resulted from the splendid cooperation and participation by Vance N. Bates, Technical Advisor, Appellate Division, St. Paul District, Omaha Branch of the Internal Revenue Service, and Louis D. Klein, Group Chief, Audit Division, Office of Director of Internal Revenue, District of Nebraska. Members of the Association participating in the program were Barton H. Kuns, Laurens Williams, Harry Cohen, Thomas M. Davies, Hale McCown, Robert G. Simmons, Jr., and Flavel A. Wright.

Registration included 372 lawyers from 112 towns in Nebraska. It is the opinion of the committee that the Tax Clinics should be continued annually and arrangements have been made for presentation of the Clinic at Scottsbluff, Kearney and Omaha, from December 14 to 19, 1953, inclusive.

2. The committee sponsored legislation pursuant to the committee's report to the 1952 convention, which resulted in the enactment of LB 578 and LB 264 relating to inheritance and estate taxes. The bills, as passed, substantially cover the recommendations made by the 1952

committee on taxation. In passing LB 578 the Legislature failed to include an amendment suggested by the committee to expressly provide that the provisions of LB 578 were subject to the apportionment act. It was not the intention of those connected with the passage of LB 578 to affect the apportionment act in any way and some committee members felt it should be clearly so stated in LB 578. It is suggested the successor to this committee consider the advisability of sponsoring legislation to so provide.

3. It has been suggested that the committee should study the advisability of amending the laws of the State of Nebraska to qualify the widow's allowance and a portion of the homestead exemption for the marital deduction permitted by the Federal Estate Tax Laws. The widow's allowance can be made to qualify for the marital deduction in all probability if the law is changed so as to make it a vested right which is not terminable on the death of the surviving spouse. A portion of the present homestead interest might be made to qualify by making the homestead interest subject to the succession interest so that the surviving spouse would receive as a succession interest the statutory percentage of the estate which would not be subject to the homestead interest; the homestead interest would then be limited to a life estate in the remainder. The committee feels that this proposed legislation involves a substantial change in the nature of the widow's allowance and homestead interest and should be given further study before definite action is taken. The following amendments are suggested for further study:

(a) Amend subdivision (2) of 30-103 to read as follows:

"The surviving spouse, and if no spouse survives, the children constituting the family of the deceased shall have an allowance consisting of 25% of the value of the gross estate but not to exceed $6,000.00, which amount shall be payable to the surviving spouse and to his or her heirs, or to the children constituting the family of the deceased and to their heirs, if no spouse survives, in monthly installments for a period of twelve (12) months from the date administration is granted. Such allowance shall be treated as a debt against the estate to be paid next after claims due the State of Nebraska and before claims of general creditors."

(b) Amend the second sentence of Section 40-117 R. S. 1943 to read as follows:

"In all other cases, the homestead vets on the death of the person from whose property it was selected, in the survivor for life, and afterwards in the decedent's heirs forever, subject to the power of the decedent to dispose of the same, except the life estate of the survivor, by will; provided, however, in all cases where the surviving spouse succeeds to the interest of the deceased spouse under the laws of descent of this state, the homestead interest of the surviving spouse shall be subject to the succession interest of the surviving spouse and shall consist of a life estate in the remainder existing after the succession interest of the surviving spouse has been determined."

4. L. B. 264 requires the Tax Commissioner to adopt regulations for valuing life estates and remainder interests. The committee has been consulted by the Tax Commissioner and has provided the Tax Commissioner with suggested regulations which follow the regulations of the Internal Revenue Service of the U. S. Government relating to the same problems.

5. *It is the recommendation of your committee (1) that the tax institutes be continued on an annual basis; (2) that future committees study the problem of improving the character of the programs at the institute so as to create greater interest in the association and increased attendance at the institute, and (3) that the successor to this committee give further study to the advisability of sponsoring legislation (a) to clearly state that 30-103.01 R. S. Sup. 1953 is subject to the apportionment act, and (b) to quality the widow's allowance and homestead right for the marital deduction.*

FLAVEL A. WRIGHT, *Chairman*
BARTON H. KUHNS, *Co-ordinator*
HARRY B. COHEN
THOMAS M. DAVIES
DONALD C. HOSFORD
VANCE E. LEININGER
H. HALE MCCOWN
PERRY W. MORTON
BARLOW NYE
ROBERT G. SIMMONS, JR.
CHARLES G. THONE

PRESIDENT WILLIAMS: Next, the report of the Committee on Unauthorized Practice of Law, Mr. Jack E. Lyman, Chairman. Mr. Lyman!

JACK E. LYMAN: Mr. President, Ladies and Gentlemen: The report of the Committee on Unauthorized Practice of Law appears on Page 33 of the program. The Committee has two recommendations that it wishes to make: (1) That all local bar associations appoint a Committee on Unauthorized Practice of Law so that such matters may be referred to the local committees in the future; and (2) That a case against the George S. May Company of Chicago be referred to the Litigation Committee on the Unauthorized Practice of Law for prosecution.

The committee further has asked me to say a few words regarding what it believes is the worse thing that is happening today in this state regarding the unauthorized practice of law, and that is laymen, and particularly life insurance company representatives holding themselves forth as experts on estate planning. Particularly do they hold

themselves forth as able to save the individual or client thousands of dollars in federal estate taxes.

We have an instance in Scotts Bluff County where a layman from Lincoln contacted this individual and advised that he could save some $10,000 in federal estate taxes, and his fee for this service would be $1,000.

I think that, without question, that is the worst thing we have to contend with today in this state. I move adoption of the report.

PRESIDENT WILLIAMS: You have heard the report of the committee. Is there a second?

GEORGE A. MUNRO (Kearney): I second the motion.

PRESIDENT WILLIAMS: Is there any discussion?

ROY E. BLIXT (Arnold): What is this George S. May matter?

PRESIDENT WILLIAMS: Mr. Lyman, will you answer the question? The inquiry is regarding the George S. May matter.

CHAIRMAN LYMAN: We have had two complaints from attorneys in this state. The George S. May company goes in to conduct an engineering service for a business and in many instances, perhaps in most instances, recommends incorporation of the business.

As one particular instance, there is a case out at Alliance where the representative of the May Company did recommend incorporation, and the fees were entirely paid to the auditors or others who came to Alliance. Apparently a Chicago attorney did draft the articles of incorporation and by-laws which, as was reported to the committee, were no more than a canned set of articles and by-laws. In this instance the attorney was not paid for his service, is unknown to the individual client there in Alliance, and the charges were made entirely by the George S. May Company for these legal services.

PRESIDENT WILLIAMS: I wonder, Mr. Chairman, in view of the rather tortuous history of this association's recent litigation in the area of unauthorized practice of law, whether you would consider changing your motion to this matter to next year's Executive Council with authority to act, instead of mandating this Association to go into litigation in a case about which there has been such little discussion on the floor of the Association.

CHAIRMAN LYMAN: Yes.

PRESIDENT WILLIAMS: Do we have the consent of the second to so change the motion?

MR. MUNRO: Yes.

PRESIDENT WILLIAMS: The motion as amended is that portion of the motion for adoption of the report which has to do with the institution of an action against George S. May Company of Chicago be changed in the form so that the Executive Council is authorized in its discretion, after a full study of the matter, to institute such litigation if its findings

are that such company is engaged in the unauthorized practice of law. Is that correct?

Is there any further discussion? If not, are you ready for the question? All those in favor say "aye"; all those opposed, same sign. Unanimously carried.

Report of the Committee on the Unauthorized Practice of Law

The above captioned committee reports as follows:

There have been six complaints considered by the committee on the unauthorized practice of law during the past nine months. The most serious of these complaints have in each instance been made against insurance representatives who have held themselves forth as experts in estate planning. The representations have been, that the representative or his company's experts would plan the estate of an individual and thousands of dollars would be saved in estate and inheritance taxes as well as probate costs.

There has also been one complaint that a foreign corporation solicits business throughout the state on the representation that it has personnel who are experts in corporation law and the forming of corporations.

As the committee is scattered from Omaha to Scottsbluff, it has been found impracticable to have a meeting for final determination of the action on the several complaints during the past ninety days and therefore a meeting has been scheduled for November 11, 1953, at 7:30 o'clock P.M., at the Paxton Hotel, Omaha, Nebraska, at which time, final action will be taken on all complaints and the same disposed of by committee resolution.

JACK E. LYMAN, *Chairman*
PAUL L. MARTIN, *Co-ordinator*
ROGER V. DICKESON
SAMUEL C. ELY
DONALD P. LAY
GEORGE A. MUNRO
ABEL V. SHOTWELL
L. R. STINER

PRESIDENT WILLIAMS: Next, the report of the Committee on Cooperation with American Law Institute, the Honorable Harry A. Spencer, Chairman. Judge Spencer!

HARRY A. SPENCER: Mr. President, the report of the committee appears in full in the printed program. Two members of the committee were in attendance at the American Law Institute last May, and we have detailed the work that was done at that Institute. I would call your attention to the fact that the President of the American Law In-

stitute announced receipt of a $560,000 grant from the Trustees of the A. W. Mellon Educational and Charitable Trust, the income of which is to be used for the continuation of the work by which the Restatement will be subjected to constant examination and revision. This does not mean that there is going to be a new edition of the Restatement every year or even every five years. It does mean, however, that subject by subject the work will be carried forward to produce an authoritative statement of the current law.

Your committee therefore recommends that future committees arrange for the gradual compilation of the Nebraska Annotations to the Restatement, so that we may keep pace with the work being done by the Institute.

I also call your attention to the fact that there is, just as you go out the door, on the east wall, a display booth on Continuing Legal Education, and suggest to everyone of you who has not already done so, examine that booth and the various publications which you will find on display.

It is the opinion and recommendation of your Committee that the Committee on Cooperation with the American Law Institute continue to keep in close touch with the work of the Institute, lending such service as it is capable of in the promotion of its work in procuring for the members of the Bar and public the greatest possible benefits; that the Committee specifically consider further work on the Nebraska Annotations to the Restatements; and that the Committee be authorized at Association expense as deemed advisable to have a member thereof in attendance at the next annual meeting of said Institute.

Mr. President, I move the adoption of the report as it appears in the printed program.

PRESIDENT WILLIAMS: Is there a second?

RALPH S. MOSELEY (Lincoln): I second the motion.

PRESIDENT WILLIAMS: Is there any discussion? All those in favor say "aye"; those opposed, same sign. It is unanimously carried. Thank you, Judge Spencer.

Report of the Committee on Cooperation with the American Law Institute

Your Committee on Cooperation with The American Law Institute reports as follows:

The Thirtieth Annual Meeting of the American Law Institute was held at the Mayflower Hotel in Washington, D. C., on May 20, 21, 22 and 23, 1953. Two of the members of the Committee were in attendance for the four days.

The material covered at the sessions were the Uniform Commercial Code, Revisions of the Federal Income Tax Statute, Proposed Revisions

of the Restatements of the Law of Agency, Conflict of Laws and Trusts, and the first draft of the Model Penal Code.

As reported by the previous committee the 1952 session officially adopted the Uniform Commercial Code. The 1953 session considered some changes in text and comment recommended by the Editorial Board. As of the date of the annual meeting only one state, Pennsylvania, had adopted the Code, the effective date of adoption to be July 1, 1954. As of that date seven other states were in various stages of considering the Code, but no ready approval was expected in any of them. The legislative program, however, is not the function of the Institute, but rather that of the National Conference of Commissioners on State Laws. As suggested in the 1952 report, the new Code is designed to replace a substantial number of uniform acts. It comprehensively covers sales, commercial paper, bank deposits and collections, bulk transfers, warehouse receipts, bills of lading and other documents of title, investment securities and secured transactions. The fact that revisions are in process, because some groups of business and professional concerns are only now finding out what is contained in the Code, and the fact that so little progress is as yet evident on uniform adoption, compels your committee to again suggest that it would be unwise for us to recommend submission to the Nebraska Legislature until future committees had studied the act further and its adoption and use in some of the more highly commercialized states than Nebraska had demonstrated its general acceptance.

The Institute continued its consideration of the work of its Council, the Reporters and the Tax Policy Committee and Special Consultants of the proposed new Federal Income Tax Statute. This project now in its fifth year is an attempt to rewrite the Federal Income Tax Statute. Tentative drafts No. 6 and 7, which were presented at the 1952 meeting and then revised, were again presented at the 1953 meeting and adopted. Specifically discussed were the subjects of Deductions, Accounting, Partnerships and Trusts and Estates.

First drafts of proposed revisions of the Restatement of the Law of Agency, Conflict of Laws and Trusts were submitted by the interested reporters and fully discussed. With reference to the Restatements the President of the Institute announced receipt of a $560,000 grant from the trustees of the A. W. Mellon Educational and Charitable Trust of Pittsburgh, Pennsylvania, the income of which is to be used for the continuation of the work by which the Restatement will be subjected to constant examination and revision. This does not mean that a new addition of the Restatement will be brought out every year or even every five years. It does, however, mean that subject by subject the work will be carried on to produce an authoritative statement of current law in the common law field. Your committee therefore recommends that future committees arrange for the gradual compilation of

the Nebraska Annotations to the Restatement so that we may keep pace with the work being done by the Institute.

Two days of the session were given over to a discussion of tentative draft No. 1 of the Model Penal Code covering general principles of liability and property crimes. The Reporter and Associate Reporters explained their approach to the problems involved. The draft had been approved by the Advisory Committee which is composed of sociologists, psychologists, psychiatrists, social scientists, representatives of penal institutions, law professors, judges and not more than four lawyers actively engaged in practice in the criminal law field. It was evident to the members of the committee in attendance that too much stress was put on new, untested definitions, with accepted meanings being too easily discarded in the general principles of liability enunciated. Consequently there was spirited debate on practically every sentence, with many deletions and suggested revisions. The final action was a recommendation that the Reporters entirely revise the draft in the light of the discussion and present such revision at the 1954 session. The observation of your chairman is that the Advisory Committee is woefully weak in lawyers experienced in the field of criminal law in proportion to the penologists, psychologists, social scientists and law teachers on the committee.

The Institute is continuing and expanding its work in the field of Continuing Legal Education. This is a joint project with the American Bar Association. The President of our Association, Laurens Williams, is a representative of the American Law Institute on the Committee on Continuing Legal Education serving a four-year term ending January 1, 1957. Arrangements have been made for a display booth on Continuing Legal Education at our annual meeting. This booth will be in the charge of a member of the National Committee and all of the work of the Committee will be explained and the various publications will be displayed. As the membership will have a chance to become thoroughly familiar with the work of the Committee through this project we merely refer to it in this report.

It is the opinion and recommendation of your Committee that the Committee on Cooperation with the American Law Institute continue to keep in close touch with the work of the Institute, lending such service as it is capable of in the promotion of its work in procuring for the members of the Bar and public the greatest possible benefits; that the Committee specifically consider further work on the Nebraska Annotations to the Restatements; and that the Committee be authorized at Association expense as deemed advisable to have a member thereof in attendance at the next annual meeting of said Institute.

HARRY A. SPENCER, *Chairman*
FRED M. DEUTSCH

WILLIAM H. LAMME
ROBERT D. MOODIE
JOHN W. YEAGER

PRESIDENT WILLIAMS: Next, the report of the Special Committee on Rules Governing Investigation and Disposition of Charges. Is Mr. Rush Clarke, Chairman, present? Is any other member of the committee ready to report for that committee?

Next, then, the report of the Committee on Legislation, John P. McKnight, Chairman. Mr. McKnight!

JOHN P. MCKNIGHT: Mr. President, Members of the Association: Our report is found on Page 37 of the program. We were one of the committees allocated two minutes. I am sure that is adequate time, but I don't want it to reflect the length of time that the committee worked.

Our committee sets up what we envisioned to be our duties, what we did to carry out those duties, and made some recommendations which are sort of guideposts for the succeeding committee.

I will point out to you that we met with the legislature, and you may recall that we furnished the members of the Association and the judiciary of the state a summary of pending legislation after the time expired for filing bills. The summary gave the proposed measures, their substance, their introducers. Another committee of the Association will meet and report to the Association before the next session of the legislature.

I believe the report is self-explanatory. Mr. President, I move its adoption.

PRESIDENT WILLIAMS: Is there a second to the motion.

ROBERT D. MCNUTT (Lincoln): I second the motion.

PRESIDENT WILLIAMS: Is there any discussion?

I am going to discuss it to this extent, to thank Jack McKnight for a terrific amount of effort. The job of being Chairman of this Committee is a very difficult one. I do think it will be a long forward step if you adopt this recommendation—I know I am stepping away out of character in saying that—because parts of it constitute an integral part of our proposed program of public service.

Is there any further discussion? All those in favor say "aye"; all those opposed, same sign. Unanimously carried.

Report of the Committee on Legislation

The committee envisioned its duties to be:

1. Presentation to the Legislature of those measures having the support of the Nebraska State Bar Association, including appearances before legislative committees.

2. While the Legislature was in session, following its action relating to bills of interest to the members of the Bar and the Courts, and timely informing the Bar of the action being taken.

3. Promoting a cooperative relationship between the Nebraska State Bar Association and the Legislature with the view of serving the best interests of the State.

4. Making an annual report to the Bar Association of the action taken by the committee during the preceding year with recommendations for future action of the association and its legislative committee.

Our committee became operative shortly before the 1953 legislative session convened and undertook to assist with the preparation and presentation of bills desired by the association; to study, index, and prepare a summary of the bills of interest to the Bar, giving the number, the names of the introducers, and a statement of the substance of each. This information was submitted in a report to each member of the association shortly after the end of the twentieth legislative day, which terminated the period for introduction of bills. A letter of transmittal invited the members of the bar to express themselves to the committeee or to the legislative representative of their district with the view that the legislators receive the benefit of recommendations of practicing attorneys and members of the bench.

With specific reference to the recommendations of our predecessor committee approved by the association at the 53rd annual meeting in 1952, the Legislature did not consider measures adopting rules in federal courts concerning the trial of law cases without a jury unless demanded, nor permitting a litigant to call an adverse party as a witness without being bound by his testimony, and did not recognize need for legislation dealing with landlords and tenants, probate of foreign wills, modification of statutes relating to homesteads and exemption from execution, nor eminent domain proceedings.

The committee considered the Uniform Commercial Code, correlating in one act the Negotiable Instrument Law, Sales Act, Warehouse Receipts Act and other uniform acts recently prepared by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, and found that time did not permit presentation of this extensive act to the Legislature then in session, but concurred in the opinion of the preceding committee that it should have further consideration by the members of the bar with the view of recommending adoption at a later session of the Legislature.

Two members of our committee, Senators Robert D. McNutt and Earl J. Lee, also being members of the Legislature, were of great assistance in our relationship with the Legislature, and it is believed that future committees on legislation should include members of the Legislature.

Our committee recommends:

1. *That the commitee on legislation appointed in odd-numbered years devote its efforts primarily to the study and preparation of desirable legislation, and the committee appointed in even-numbered years be charged primarily with the responsibility of proper presentation to the Legislature of measures approved by the Bar, and of keeping members of the Bar informed of legislative action.*

2. *That our successor committee make a thorough study of the desirability of employment by the Association of a paid legislative representative to work with the Committee on Legislation on all Bar Association matters pending before the Legislature, and provide a legislative reporting service to members of the bar.*

3. *That the association recommend to the Legislature a bill to authorize employers to pay to the surviving dependent spouse of a deceased employee wages owing to the deceased at the time of his death, not exceeding $200.00.*

4. *That continued efforts be made to secure legislation dealing with contributions by joint tort-feasors, with a specification that the contribution be enforced by a separate action, rather than by a provision enabling the joint tort-feasor to be made a third-party defendant.*

5. *That the association continue efforts for legislation setting up a Tort Claims Act, with consideration given to eliminating objections to this type of legislation that arose at the last session.*

6. *That the association through our successor committees give consideration to a procedure that will enable objections of individual members of the Bar to proposed legislation, to be brought to the attention of the association and the Legislature, after proposed legislation has been considered at the annual meeting of the Association.*

JOHN P. MCKNIGHT, *Chairman*
HARRY A. SPENCER, *Co-ordinator*
JAMES H. ANDERSON
CLARENCE A. DAVIS
TRUE R. FERGUSON
JOSEPH GINSBURG
EARL J. LEE
ROBERT D. MCNUTT
CLARENCE A. H. MEYER
STERLING F. MUTZ
FRANKLIN L. PIERCE
WALTER R. RAECKE
LEWIS R. RICKETTS
DEAN G. KRATZ

PRESIDENT WILLIAMS: Has Mr. Clarke entered the room? If not, in order that we may get these matters cleaned up as we go along, please Procedure which appears on Page 36 of the printed program. I believe

it is self-explanatory. In substance it is a recommendation for continued study and subsequent report. Because of the nature of it, I turn to the report of the Special Committee on Rules of Disciplinary wonder if some one would move its adoption?

ROY E. BLIXT (Arnold): I will move its adoption.

PRESIDENT WILLIAMS: Is there a second?

PAUL MARTIN (Omaha): I second the motion.

PRESIDENT WILLIAMS: Is there any discussion? Are you ready for the question? All in favor signify by saying "aye"; all opposed, same sign. The motion is unanimously carried.

Report of the Special Committee on Rules Governing Investigation and Disposition of Charges

The committee appointed by the president to study and recommend the revision of the rules for disciplinary procedure has made a considerable study of the problem and is of the opinion that some changes should be made in the rules relating to disciplinary procedure.

It has not been possible, however, within the time which has elapsed since the naming of the committee, to formulate specific proposals covering the entire field of disciplinary procedure. It is obvious that the matter is of extreme importance not only to the bar as a whole and the public, but also to such persons as may be the subjects of investigation.

The committee is gathering a large amount of data and an historical digest of the development of the present rules has been prepared for consideration by the entire committee.

Among the matters which must be considered and given a great deal of thought before a final report is made by the committee are the following:

1. Whether the present machinery operates too slowly, and if so, what should be done about it.

2. Whether it is satisfactory and desirable that complaints be handled in the first instance by a local committee, as under the present system, whether local committees should be abolished altogether, or whether some preliminary investigation should be made by an impartial investigator representing the executive council before reference to the local committee.

3. Whether the present rules prohibiting any publicity concerning an investigation are satisfactory and capable of enforcement. The fact is that any investigation of a lawyer against whom a complaint has been made, involves talking to somebody, usually lawmen, who are not bound by any rules, and who in fact do give publicity to the investigation—usually inaccurate and misleading publicity. What should be done about it is, again, a matter requiring rather careful and lengthy consideration.

4. Whether the bar association and the local bar associations should be notified of applications for reinstatement, and given an opportunity to resist or recommend reinstatement.

These are just a few of the problems confronting the committee and the ramifications of the subject are such that the committee feels and recommends that the special committee should be continued, authorized to conclude its studies and report at a later date.

RUSH C. CLARKE, *Chairman*
WILBER S. ATEN, *Co-ordinator*
RAYMOND G. YOUNG
VARRO E. TYLER
CLARENCE A. H. MEYER
DANIEL STUBBS

PRESIDENT WILLIAMS: Next is the report of the Committee on American Citizenship, Mr. Joseph J. Vinardi, Chairman. Mr. Vinardi!

JOSEPH J. VINARDI: Mr. President, Members of our Association: The report of the Committee on American Citizenship will be found on Page 39 of the program. I assume you have all read it.

The substance of it is that your committee sincerely believes there exists a real need for a positive Americanism program emphasizing a better understanding and appreciation of the Constitution of the United States, and secondly, that such a program should be directed primarily to the youth of our state. In line with that belief and that finding of your committee as is set out in the program, more particularly on Page 40 thereof, we recommend the adoption of a program to achieve the result I have mentioned. The type of program, in substance, is an Americanism program for the purposes I have stated, of creating and fostering a better understanding and appreciation of the Constitution of the United States among the high school students of our state.

The program as you find it set out in detail involves the activity of many of the members of this Association and their participation in the program. The program is not a program calling for the writing of essays, or any such trite thing as that, because we don't want to limit the participation in such an important Americanism program. It is the type of program wherein an award will be made to students whom the faculty finds to have achieved the best understanding and appreciation of the Constitution of the United States during the academic year.

We sincerely also believe that this program will serve as a very fine public relations program for the Association. We recommend also that it be conducted out of the office of the Director of Public Service, which we have been told by our President is now with us.

Mr. Chairman, I move the adoption of the report.

PRESIDENT WILLIAMS: Is there a second?

LEWIS R. LEIGH (Omaha): I second the motion.

PRESIDENT WILLIAMS: Is there any discussion or comment? If not, are you ready for the question?

JAMES G. MOTHERSEAD (Scottsbluff): This is not a criticism of the report, but I want to enter a caveat. The committees all seem to think that the extra ten dollars dues makes unlimited resources for the Association. In voting on these things where they recommend so much and so much, I understand that the constitution making the Executive Council responsible to see we don't spend more money than we have still applies. I am a little alarmed at this attitude of unlimited resources. There have been several recommendations passed here which would indicate that we are directing the expenditure of money. The responsibility is still that of the Executive Council.

PRESIDENT WILLIAMS: The caveat is well taken. I may say for the record that this point already has been discussed with the committee chairman. Further, this particular report and activity already has the approval of the Executive Council. We also have advised the committee that if this report is approved, the dollar amount stated is subject to final determination by the Executive Council under the rules under which this organization exists. So in this particular instance I believe we have not mortgaged our future.

MR. MOTHERSEAD: I was not criticizing this particular report, but only the general trend.

PRESIDENT WILLIAMS: I think you made that very clear. I appreciate very much your directing attention to that fact. It is a matter with which we all are concerned, because our new revenue from increased dues is not going to go as far as we would like.

Is there any further discussion? Are you ready for the question? All those in favor say "aye"; those opposed, same sign. The motion is unanimously carried.

Report of the Committee on American Citizenship

Your Committee on American Citizenship submits the following report:

It is the sincere belief of your Committee that a real need exists for a positive Americanism Program emphasizing a better understanding and appreciation of the Constitution of the United States and that such a program should be directed primarily to the youth of our State. Your Committee has, therefore, formulated a Suggested Program of Activity which affords every high school student in our State an opportunity to participate in an activity which it is felt will create and foster a better understanding and appreciation of our Constitution.

Your Committee also believes that the following Suggested Program of Activity for the Committee on American Citizenship of the Nebraska State Bar Association would constitute a most desirable public relations activity for our Association.

We therefore offer the following Program of Activity:

TYPE OF PROGRAM:

An Americanism Program for the purpose of creating and fostering a better understanding and appreciation of the Constitution of the United States among the high school students of the State of Nebraska to be known as the ANNUAL CONSTITUTION AWARD FOR NEBRASKA HIGH SCHOOL STUDENTS.

TYPE OF AWARD:

An award made by the Nebraska State Bar Association consisting of a bronze key and certificate of achievement awarded to one student in each Nebraska High School, who, in the opinion of the faculty of the school, has acquired the best understanding and appreciation of the Constitution of the United States.

ELIGIBILITY:

Any student duly enrolled in a high school in the State of Nebraska, wherein a course or courses are taught involving a study of the Constitution, could be eligible for the award.

METHOD OF SELECTION OF STUDENT WINNER:

Student to receive the award in each school should be that student, who, in the opinion of that high school faculty, has achieved the best understanding and appreciation of the Constitution. The faculty of the school should have entire discretion in the selection of the student to receive the award.

DETAILS CONCERNING CONDUCT OF PROGRAM:

(a) September—A poster, announcing the "ANNUAL NEBRASKA STATE BAR ASSOCIATION CONSTITUTION AWARD," setting forth the rules governing the award should be mailed to each school superintendent (or principal) having jurisdiction of a high school in the State of Nebraska.

(b) September—The above poster should be mailed with a letter from the Chairman of the Committee on American Citizenship advising the school superintendent, (or school principal) of the purpose of the program, inviting and urging the participation of the school in the program and explaining the simple requirements.

(c) September—A letter should be written to each member of the Nebraska State Bar Association enclosing a copy of the above mentioned poster urging each lawyer to contact the school superintendent (or high school principal) in his community and help explain the program to him and request the participation of the school in the program.

(d) November—A letter from the Chairman of the Committee on American Citizenship to be written some time in November of each

year thanking each school superintendent (or school principal) who is to participate in the program, advising him of the enrollment of the school and advising him that the Association will await receipt of the name of the student to receive the award in order that it may be properly presented, etc.

(e) November—A letter from the Chairman of the Committee on American Citizenship should be sent to all Nebraska high school superintendents (or principals) who have not indicated an intention to participate in the program again explaining the simplicity and the purpose of the program, urging the school to participate.

(f) February—Sometime before March 1st of each year a member of the Nebraska State Bar Association should be selected to make the presentation of the award in a high school in his community; he should be requested to assume the responsibility of making arrangements with the proper school officials for the time and place of presentation —if possible the awards should be made at commencement exercises and be accompanied by appropriate remarks by the member of the Bar making the presentation of the award. (It is felt that this will present a very fine opportunity to enhance the public relations of the State Bar Association.) Members of the Bar making the presentation should be requested to make a report to the Chairman of the Committeen on American Citizenship after the presentation has been made.

TYPE OF PRESENTATION:

The presentation to be made to the winning students should be a bronze key, which can be obtained at a nominal cost from several sources such as Josten's Award Division of Owatonna, Minnesota. When the award is presented, the winning student should also be presented with a certificate signed by the President of the Nebraska State Bar Association, the Chairman of the Committee on American Citizenship and the "Resident Chairman." (The latter being the member of the local Bar making the presentation to that particular student.)

REMARKS:

Your Committee has made a study of similar plans in effect in other states. The plan outlined above is patterned after the program which has been conducted by the North Dakota State Bar Association for five years, which plan has been very successful.

It is felt that by leaving the selection of the winning student entirely to the discretion of the faculty of each high school we will get away from the somewhat trite custom of invoking strict rules and regulations to be followed in order to participate in the program. Furthermore, this plan affords every student in the high school an opportunity to participate without restriction.

A study of the cost of conducting this program in other states makes it possible for your chairman to assure you that this contest can be

sponsored in the State of Nebraska at a cost of not to exceed $1,000.00 per year.

We sincerely recommend the above Program for adoption.

JOSEPH J. VINARDI, *Chairman*
GEORGE B. HASTINGS, *Co-ordinator*
LAURENS WILLIAMS, *Vice-Chairman*
GEORGE H. TURNER, *Vice-Chairman & Secretary*
LEWIS R. LEIGH
JOHN R. SWENSON
ROY A. SHEAFF, *1st District*
JAMES F. GREEN, *2nd District*
ROBERT D. FLOREY, *3rd District*
GREYDON L. NICHOLS, *4th District*

PRESIDENT WILLIAMS: Next, the report of the Special Committee on Lawyer Referral Service, Mr. Alfred G. Ellick, Chairman. Mr. Ellick!

ALFRED G. ELLICK: Mr. President, Members of the Association: Our report is unique in that it is the only one on the program where the members of the commtitee recommend that their own committee be abolished.

We believe that the problem of establishing a lawyer referral service in Lincoln and Omaha is one to be considered by the local bar associations of those cities, and that the continued existence of our special state committee is no longer justified.

Mr. President, I move the adoption of the report.

PRESIDENT WILLIAMS: Is there a second?

RICHARD A. VESTECKA (Lincoln): I second the motion.

PRESIDENT WILLIAMS: Is there any discussion? All those in favor of the motion signify by saying "aye"; those opposed, same sign. The motion is unanimously carried.

Report of the Special Committee on Lawyer Referral Service

During the past year the Special Committee on Lawyer Referral Service has continued its study of the advisability and possibility of establishing referral services in Nebraska. We have arrived at the following conclusions:

1. Omaha and Lincoln are the only two Nebraska cities where a lawyer referral service would be feasible.

2. The question of whether a referral service should be established in these cities must be answered by the respective local bar associations after study and recommendation by the committees already appointed for that purpose.

3. The Special State Bar Association Commitete on Lawyer Referral Service should be dissolved since any affirmative action toward the actual establishment of a referral service can only be undertaken at the local level.

Your committee has met with representatives from the committees of the Lincoln and Omaha bar associations who are studying this problem and we have urged and recommended that prompt and serious consideration be given to setting up a referral service in each of these cities. The referral system is being rapidly expanded throughout the country and almost without exception the results have been beneficial to both the bar and the public.

In conclusion, it is the feeling of your committee that it has served its purpose and we recommend, therefor, that the Special Committee on Lawyer Referral Service be abolished.

ALFRED G. ELLICK, *Chairman*
THOMAS C. QUINLAN, *Co-ordinator*
LESLIE BOSLAUGH
CLARENCE A. DAVIS
VIRGIL J. HAGGART
L. ROSS NEWKIRK
ARTHUR E. PERRY

PRESIDENT WILLIAMS: Next, the report of the Committee on the Roscoe Pound Lectureship. Dean Belsheim will deliver the report in the absence of the Chairman. Dean Edmund O. Belsheim of the University of Nebraska!

EDMUND O. BELSHEIM: Mr. President, the report of our committee appears on Pages 42 to 46 of the program. It closes with a single recommendation which reads:

"Your Committee recommends that the Nebraska State Bar Association discontinue paying the expenses of the lectures held at the University of Nebraska in honor of Dean Roscoe Pound, but that the members of the Association individually continue their support of the Roscoe Pound Fund in every possible way."

I wish only to emphasize by repetition the last clause, "that the members of the Association individually continue their support of the Roscoe Pound Fund in every possible way."

Mr. President, I move that the report be filed and that the recommendation of the committee be adopted.

PRESIDENT WILLIAMS: Is there a second?

JAMES G. MOTHERSEAD (Scottsbluff): I second the motion.

PRESIDENT WILLIAMS: Is there any discussion?

I wish to express personally my own thanks to the Chairman and the members of this committee for a very fine and comprehensive report this year.

If there is no further discussion, are you ready for the question? All those in favor signify by saying "aye"; those opposed, same sign. It is unanimously carried.

Report of the Roscoe Pound Lectureship Committee

In 1947, Honorable Harvey M. Johnsen, United States Circuit Judge, and former President of the Nebraska State Bar Association, suggested that the lawyers of Nebraska should in some appropriate manner acknowledge recognition of the great service which Roscoe Pound has given in the fields of law and jurisprudence. In accordance with Judge Johnsen's suggestion, Robert R. Beatty, President of the Nebraska State Bar Association in 1948, appointed the first Roscoe Pound Lectureship Committee. This Committee reported to the annual meeting of the Nebraska State Bar Association in Omaha in 1948, in part as follows.

> "Roscoe Pound is one of the most distinguished sons of this State, and certainly its most distinguished son in the field of law and jurisprudence.
>
> Roscoe Pound was born in Nebraska, graduated from the University of Nebraska, began the practice of law in Lincoln, was a member of the Supreme Court Commission, and Dean of the College of Law of the University of Nebraska. Then he went to Northwestern and ultimately to Harvard where he became Dean of the School of Law. * * *
>
> The suggestion of Judge Johnsen was that an appropriate tribute to Dean Pound would be the establishment in the College of Law at the University of Nebraska, where he began his career as teacher and leader in our field, a series of lectures to be given annually which would be of interest not alone to students of the College of Law, but to lawyers and to the public generally. * * *
>
> Your Committee has given this matter much consideration and in its opinion, this proposal is worthwhile, and we urge that the Bar of this state, and the lawyers generally, heartily and with unity support it."

The report of the Committee was unanimously adopted, and the Committee began a campaign to raise funds to establish the lectureship.

When the sum of $4,554.00 had been contributed to this fund, it was considered advisable to reduce to writing a formal Trust Agreement. This Trust Agreement was executed June 1, 1950, and is as follows:

> *"TRUST AGREEMENT*
>
> WHEREAS, Roscoe Pound, native Nebraskan, graduate of the University of Nebraska, former Dean of its College of Law, former member of the Nebraska Supreme Court Commission, and former Dean of the Law School of Harvard University, is universally recognized as one of America's ablest and most distinguished jurists;
>
> WHEREAS, members of the Bar of the State of Nebraska, former students of Roscoe Pound, alumni and friends of the University of Nebraska, and the public generally desire to give deserved recognition to the accomplishments and achievements of Roscoe Pound, by establishing a lectureship in his name at the College of Law of the University of Nebraska, and

WHEREAS, donors representing the various groups referred to have contributed to the University of Nebraska Foundation the sum of $4,554.00 for the purpose of establishing such lectureship, the receipt of which sum is hereby acknowledged by the University of Nebraska Foundation;

NOW, THEREFORE, it is agreed between the Executive Council of the Nebraska State Bar Association, on behalf of the members of said association and the donors hereinabove mentioned, and the University of Nebraska Foundation, a corporation, as follows:

1. The trust or fund hereby provided for shall be known as the Roscoe Pound Fund.

2. The University of Nebraska Foundation, as trustee of said fund, will accept gifts, devises and bequests for the uses and purposes hereinafter set forth. All property given, devised or bequeathed to said Foundation as such trustee shall be held and administered by it as a single trust and devoted exclusively to such uses and purposes.

3. The University of Nebraska Foundation, as trustee of said fund, shall have full right, power and authority to manage, control, invest and reinvest the principal of said fund in accordance with the rights, powers and authority now conferred or hereafter conferred upon it by law or by its articles of incorporation.

4. The distribution and application of the net income of said fund shall be made from time to time for one or more of the uses and purposes hereinafter set forth, upon the order or direction of a committee (hereinafter called the 'committee') consisting of the Chancellor of the University of Nebraska, the Dean of the College of Law of the University of Nebraska and the President of the Nebraska State Bar Association or such other representative of said association as the President may appoint to act for him. The committee shall cause to be kept a complete record of its proceedings, a copy of which shall be filed with the trustee.

5. Subject to the terms of any specific gift, devise or bequest, the University of Nebraska Foundation, as trustee of said fund, shall pay and disburse the net income thereof at such times and in such amounts as shall from time to time be ordered or directed by the committee for the purpose of establishing, promoting and conducting annually, or at such times as the committeee may determine, a lecture or series of lectures at the College of Law of the University of Nebraska by prominent jurists, lawyers or other persons, upon subjects relating to judicial, governmental or public affairs. Such lectures shall have as their object the preservation of American institutions and liberties. The persons to deliver such lectures shall be selected by the Committee.

6. Should the net income of said fund be in an amount more than necessary to maintain such lectureship as determined by the committee, the excess income shall be used for the purpose of establishing at the College of Law of the University of Nebraska one or more Roscoe Pound scholarships for worthy law students in need of financial assistance, and in the discretion of the committee, one or more Roscoe Pound professorships. The terms and conditions for the award of such scholarships and the establishment of such professorships shall be fixed by the committee.

7. The parties hereto reserve the right to change or modify by mutual consent the provisions of this trust agreement as to details of management and operation, but such changes or modifications shall be

consistent with the general purposes herein sought to be accomplished. None of the parties hereto shall have the power or right to rescind this trust agreement.

IN TESTIMONY WHEREOF, the Executive Council of the Nebraska State Bar Association, on behalf of the members of said association and the donors hereinabove mentioned, have executed this trust agreement and the University of Nebraska Foundation, a corporation, has caused the same to be signed on its behalf by its president and attested by its Secretary, with its corporate seal hereto affixed, this 1st day of June, 1950.

EXECUTIVE COUNCIL OF THE
NEBRASKA STATE BAR
ASSOCIATION
(s) Earl J. Moyer
(s) Abel V. Shotwell
(s) Lyle E. Jackson
(s) Thos. J. Keenan
(s) Wilber S. Aten
(s) John J. Wilson
(s) Joseph H. McGroarty
(s) Laurens Williams
(s) J. C. Tye
(s) Paul L. Martin
(s) Frank D. Williams
Members.

UNIVERSITY OF NEBRASKA
FOUNDATION
By (s) R. E. Campbell
President

Attest:
(s) Perry W. Branch
Secretary.
(SEAL)"

Since the Roscoe Pound Lectureship was established by the Nebraska State Bar Association, the Executive Council of the Association has paid the expenses of the lectures thus far held. Dean Roscoe Pound opened the lectures in 1950, followed by Chief Justice Arthur Vanderbilt of the New Jersey Supreme Court in 1952, and Professor Warren A. Seavey of the School of Law of Harvard College, formerly Dean of the College of Law of the University of Nebraska, in 1953.

It is the belief of the Committee that the Roscoe Pound fund is now of a sufficient amount that the income therefrom will support the lectures, at least upon a basis of every other year, and that it is no longer necessary for the Nebraska State Bar Association to underwrite the expenses of the lectures. The fact that the Fund has now reached the point where it is possible on a restricted basis to hold the lectures in the future without payment of the expenses thereof by the Bar Association should not however cause the Association and its members to lose sight of the goal, which existed in the establishment of the Fund, of

making the undertaking one of worthy tribute, honor and memorial on the part of the lawyers of Nebraska to Roscoe Pound, or to diminish their interest and effort in building up the Fund, through further personal contributions and by recommending the Fund, wherever advisable and proper, to clients desiring to make gifts or provisions in their last wills for educational purposes—to the end that the Fund may become sufficient to serve fittingly as a mark of the respect and appreciation for the contribution of Roscoe Pound to the legal system of America.

Herewith is submitted a financial statement prepared by Perry W. Branch, Director-Secretary of the University of Nebraska Foundation, showing the status of the Roscoe Pound Fund:

ROSCOE POUND FUND
as of April 1, 1953.

Investment	*Book Value*	*Mkt.*	*Mkt. Value*
106 shs. Address.-Multigraph (Com.)	$5,100.00	53	$5,618.00*
2½% U. S. Series "G" Savings Bonds due 10-1-62	4,500.00		4,500.00**
2½% U. S. Series "G" Savings Bonds due 4-1-63	600.00		600.00**
2½% U. S. Series "C" Savings Bonds due 1-1-64	1,700.00		1,700.00**
2¾% U. S. Series "K" Savings Bonds due 6-1-64	1,000.00		1,000.00**
2½% U. S. Treasury Bonds due 9-15-72/67	194.26	93-24/32B	187.50***
50 shs. Warner-Hudnut, Inc., 6% 1st. Pfd.	5,000.00	98B	4,900.00*
	$18,094.26		$18,505.50

Cash	
Principal	$ 15.48
Income	1,512.54
Total	$1,528.02
Total Investments—Book Value	$18,094.26
Total Cash	1,528.02
Total in Fund	$19,622.28
Estimated Annual Income ****	
Address.-Multigraph (Com.)	$ 318.00
2½% Bonds	175.00
2¾% Bonds	27.50
Warner-Hudnut	300.00
	$ 820.50

* Valuation from Cruttenden & Company.
** Our practice to carry Savings Bonds at Par.
*** Valuation from Continental National Bank.
**** Based on current rates.

RECOMMENDATION

Your Committee recommends that the Nebraska State Bar Association discontinue paying the expenses of the lectures held at the University of Nebraska in honor of Dean Roscoe Pound, but that the members of the Association individually continue their support of the Roscoe Pound Fund in every possible way.

EARL CLINE, *Chairman*
BARTON H. KUHNS, *Co-ordinator*
E. O. BELSHEIM
PERRY W. MORTON
ROBERT W. DEVOE
JOSEPH T. VOTAVA

PRESIDENT WILLIAMS: Next, the report of the Committee on Memorials, Mr. Clinton J. Campbell of the Lincoln Bar, a past President of this Association, Chairman. Mr. Campbell!

Report of Committee on Memorials

C. J. CAMPBELL: This report is not in the printed program, for the list could not be made up until the last minute.

Your Committee on Memorials reports the names of former members of this Bar who have departed this life since our last meeting. They are:

J. H. ASHBY, Omaha
P. J. BARRETT, Greeley
FRANK A. BARTHA, Center
CHARLES F. BARTH, Seward
HERMAN F. BUCKOW, Grand Island
HENRY J. BEAL, Omaha
IRWIN CARSTENSON, Omaha
GEORGE B. CLARK, North Loup
EDWIN D. CRITES, Chadron
WILLIAM F. DALTON, Omaha
E. C. FOLSOM, Lincoln
RALPH W. FORD, Bertrand
LAWRENCE R. FORSYTH, Omaha
JOSEPH H. GAGNON, Falls City
WILLIAM M. GILLER, Omaha
P. S. HEATON, Central City
LAWRENCE J. KEIM, Washington, D. C.
A. J. KINNERSLEY, Sidney
LANE KOSTERS, Santa Monica, California
GEORGE A. LEE, Lincoln
GEORGE A. LEE, Omaha

O. G. LEIDIGH, Nebraska City
ROLAND A. LOCKE, North Platte
JAMES F. MCDERMOTT, Omaha
J. LLOYD MCMASTER, Lincoln
CARL R. MALM, Omaha
EDWARD E. MATSCHULLAT, Lincoln
CLAUDE B. MATTHAI, Omaha
HENRY A. MEIER, Lincoln
F. M. MIELENZ, Panama
FRANK D. MILLS, Osceola
W. J. MOSS, Fairbury
GORDON A. NICHOLSON, Omaha
JACK L. RAYMOND, Scottsbluffff
FRED SHEPHERD, Lincoln
JESSE M. SHREVE, North Platte
HERBERT A. SMITH, Lincoln
FRANK J. TAYLOR, St. Paul
CLARENCE E. WALSH, Omaha

It is proper that this Association should pause and pay tribute to their memories, for during their lifetime they honored it by their membership.

They were our friends and with credit to themselves and our common profession labored among us. They symbolized the virtues of industry, courage, integrity, and loyalty. They were examples of good citizenship. Their passing is a loss to the Association and a personal loss to us, its members.

They contributed materially in the field of legislation and in the administration of justice, and left to our custody a permanent heritage. So we express our grief and loss at their passing and gratefully acknowledge the good that survives them and comes to us from their useful lives.

May we please stand as a final tribute to their memory.

... Standing in Silence ...
until seated by the gavel

PRESIDENT WILLIAMS: That concludes the reports of the committees. It is exactly twelve o'clock. The Secretary-Treasurer now will announce the results of the election.

Results of Election

GEORGE H. TURNER: Gentlemen, pursuant to Section 7, Article II of the By-Laws, the Executive Council nominated the following for officers and member-at-large of the Executive Council:

For President:
J. D. CRONIN of O'Neill

For Vice-Presidents:
LEON SAMUELSON of Franklin
ELMER SCHEELE of Lincoln
OSCAR DOERR of Omaha

For Member-at-Large, Executive Council:
HARRY A. SPENCER of Lincoln

As required by this By-Law, the Secretary mailed notices of these nominations to all active members of the Association on July 29, 1953. No opposing nominations were made by petition within the time fixed in the By-Law, and the nominees whose names I have read are therefore elected without opposition to their respective positions.

PRESIDENT WILLIAMS: Thank you, Mr. Secretary.

At this time the Chair will receive any resolutions which any member wishes to introduce. Are there any resolutions to be introduced at this time? This is your last chance, gentlemen. Very well, we have none. That means the Executive Council will not meet until five o'clock Friday.

We now will adjourn to reconvene in fifteen minutes in this room for the luncheon at which we will be addressed by the Honorable William J. Jameson, President of the American Bar Association, our kind of country lawyer.

THURSDAY LUNCHEON SESSION

November 12, 1953

The Thursday luncheon session was presided over by President Williams.

PRESIDENT WILLIAMS: Ladies and Gentlemen, there are many distinguished personages in our midst who, had they been placed at the speaker's table would have required a table stretching from wall to wall, and which, in addition, would have deprived us of the pleasure of introducing some of them for the first time at the speaker's table at the annual dinner this evening.

At the speaker's table this noon we have four of our five section chairmen. Mr. Hird Stryker, Chairman of the Section on Administrative and Labor Law, was unable to be here today.

On my extreme left, to your right, is the Chairman of our Municipal Law Section, Mr. John Keriakedes of Hay Springs. John just got in under the wire. As I announced this morning, the Council has abolished his Section . . . (laughter) but not because of John.

To John's right is the Chairman of the Section on Insurance Law, Mr. Charles A. Nye of Omaha.

On his right, Mr. Nate Holman, of the Lincoln Bar, President of the Junior Bar Section.

Taking a hurdle we now leap over to the middle of the right side of the line. Playing right tackle is the Chairman of the Section on Real Estate and Probate Law, Mr. Phil B. Campbell of Osceola.

To my left, playing left guard, is a very dear friend of mine, a man who will appear on our program tomorrow afternoon, a man who, I believe, has had more experience in the field of continuing legal education than any other person in the United States of America. He has directed the program of the Committee on Continuing Legal Education of the American Law Institute in collaboration with the American Bar Association, the so-called committee of twenty-two, since its inception —the very able John E. Mulder of Philadelphia.

Since we have the President of the American Bar Association with us today, we thought it appropriate that we ask our Associations' delegates to the House of Delegates of the American Bar Association to join us at the head table. While you have met him twice before at this meeting, on my extreme right is the Solicitor of the Department of the Interior, a past President of this Association, and one of our representatives in the House of Delegates of the American Bar Association— the Honorable Clarence A. Davis.

Another little short hurdle, and on my right, is the Honorable Paul E. Boslaugh, Justice of the Supreme Court of Nebraska, a past President of this Association, our other Association delegate to the House of Delegates of the American Bar Association—Judge Boslaugh.

One of the very wonderful traditions of this Bar Association is that the President of the American Bar Association, so far as I am aware at least in the last twenty-two years, annually has attended the annual meeting of the Nebraska State Bar Association, and has addressed it. Many times during that interval of time of which I can speak with personal knowledge, there have been very great men, great lawyers, who were President of the American Bar Association and who made learned addresses, interesting addresses. But, to be very blunt, some of them just were not our kind of people. This is a rare privilege, a great privilege, today because today our honored guest is *our* kind of folks, our kind of lawyer.

William J. Jameson is a native Montanan. He is a graduate of the University of Montana and Montana Law School in the Class of 1922. He engaged in the general practice of law immediately after leaving law school, in Billings, Montana, where he today is engaged in the general practice of law. He is one of the members of the firm of Coleman, Jameson, and Lehman, of Billings. He is *our* kind of lawyer.

He long has been active in the work of the organized bar, particularly the American Bar Association and his own state bar association. He was one of the original members of the House of Delegates of the

American Bar Association at the time of the organization of that House of Delegates in 1937. First he represented the Montana Bar Association as an Association delegate. Subsequently he became the state delegate to the House of Delegates. Later he served on the Board of Governors of the American Bar Association; and subsequently was an assembly delegate to the House of Delegates of the American Bar Association.

It is a great honor to present to you a man who, in my judgment, is one of the very great Presidents of the American Bar Association, the Honorable William J. Jameson of Billings, Montana.

... The audience arose and applauded ...

THE ORGANIZED BAR—WHAT LIES AHEAD?

Honorable William J. Jameson

Mr. President, Distinguished Guests, Members of the Nebraska State Bar Association: First of all I want to thank Larry for that very generous introduction. Much as I like it, it is sometimes a little embarrassing to be introduced in that manner. I recall the response of the President of the Canadian Bar Association, Andre Taschereau, when he was presented at the annual meeting in Boston.

He said that he was sorry his mother was not present to hear that introduction because she would have believed every word of it, and she would have been very proud. If his wife had been present, she would have been very proud. If his children had heard it, they would have said, "Aw phooey!" (Laughter)

Nevertheless, I do appreciate it, and I do appreciate also the very cordial welcome that you have given me in Nebraska. My one regret is the fact that Mrs. Jameson is not present, and by reason of that I have to leave early this afternoon. She is a native of Nebraska. We have many good friends here and we had hoped to enjoy the many activities of this meeting.

Then, too, I had looked forward to attending the Nebraska Bar Association meeting for another reason. As John Mulder put it this morning, the Nebraska State Bar Association, in his opinion, is the very first, ranks at the very top of all the state bar associations. In my official capacity, and with representatives here from Iowa and South Dakota and some of the other states, I wouldn't be in a position to rate Nebraska above those associations, but certainly it is one of the very best. And I know that is due in no small measure to your very competent and efficient Secretary, George Turner, and to a succession of very capable Presidents. Certainly during this past year, in Larry Williams you have had an outstanding President who was instituted a most constructive program. Both he and you should be very proud of his record.

Everywhere I go—and this has been no exception, they ask me how many miles I have traveled in my work so far for the Association. I made a recalculation today and I find that when I get home from this trip it will be just a little over 25,000 miles in the past three months.

Some of you who were at Boston may recall that John W. Davis, in speaking on behalf of the past presidents, said that he felt the prime requisite to be President of the American Bar Association was a rugged constitution. One of the other Presidents supplemented that my saying that the President should also have a sense of humor.

In those two respects I try to emulate my distinguished predecessors, even though I may not measure up in some other respects to their attainments.

I was particularly impressed about a month ago in South Carolina with the importance of these two qualities; that is, a rugged constitution and a sense of humor. As some of you know, one of our very newest organizations sponsored by the American Bar Association, and I think one of our most important activities, is the American Law Students Association. Incidentally, if I am not mistaken, here at Creighton University the association was recognized as the outstanding chapter of that group last year.

In any event, I had the privilege in Boston of speaking briefly to the group, and after that I had an invitation from two very fine young fellows to talk at the University of South Carolina.

I was in the southeastern part of the country about a month ago, so I stopped at Columbia for this talk. But shortly before I left Billings I also had a letter from the county bar association suggesting they would like to have a luncheon and that I might be called upon for a few informal remarks. That was the advance notice. I got off the train at seven o'clock one morning. I was met by my two young friends who took me in a car to the hotel. On the way to the hotel they told me that we started off with an eight o'clock breakfast given by the dean of the law school who was also president of the South Carolina Bar Association. That was to be followed at nine o'clock by a meeting of the Executive Committee and Commissioners of the State Bar Association to plan the campaign for the American Bar Center, at which I was to be the principal speaker. Then we were to go at ten o'clock from there to the radio station where I was to be interviewed, followed, of course, by the meeting at the law school.

Everything went according to schedule—a most delightful breakfast; we had our meeting; we went to the radio station. I should say also that when we got to the hotel—and I was in my room just twenty minutes that day—one of the boys pulled from his pocket a sheet of paper on which were the questions to be used for the interview:

1. What do you think of the Bricker amendment?

2. What is the American Bar Association doing with respect to the law's delay?

3. What is it doing in the field of uniform legislation?

4. Discuss the relationship between the bar and the press.

All of that was to be covered in a six-minute interview! When we got to the radio station we had about five mniutes before we went on the air—and I might say we didn't get around to any of those four questions.

We then rushed back to the law school where I talked for the hour that had been assigned. Then we went to a very fine luncheon—mind you, this was an informal luncheon of a small group, the Richland County Bar Association. When I got there there were well over two hundred lawyers of South Carolina. They had a distinguished guests table with the Justices of the Supreme Court, the Federal Judges, and I was to be introduced by the president of the university. They apologized that Governor Byrnes was out of the state, so instead they were asking President Russell to introduce me. (Laughter) But worst of all, there was a microphone out in front of me indicating it belonged to a radio station. So I said to the chairman, "Do you mean to say that they are broadcasting this?"

Very proudly he answered, "Oh yes. It is over the biggest station in South Carolina and they will rebroadcast it this evening."

And here I had planned to make a few informal remarks on what the American Bar Association was doing for the average American lawyer.

Well, it was a delightful luncheon, but I might say that I passed up all of it and during the hour that the rest were eating I reorganized my speech, and we went on the air at two o'clock.

After that was over, my two young friends came to me and they said, "Well now you have just about an hour before we have to leave for your plane. Maybe you would like to rest, but if not, we would like to take you over to the state capitol." Well, of course I went over to the state capitol and spent the last hour going through the Confederacy Room there.

I mention that. It was a rather hectic experience, but nevertheless it was most enjoyable—particularly in retrospect (laughter)—and very rewarding. I found those young fellows there in South Carolina, as I have found in Arkansas and Virginia and various other places, that we have in our law schools today a very fine type of young man and young woman who are entering our profession. So as I say, it is a rewarding experience to visit these various law schools.

One other thing that I find very interesting is the correspondence that is directed to the President of the Association. A large part of it is of a critical nature, criticizing some policy of the Association, some activity, some committee, some section, or some officer. But most of

it is very wholesome and constructive, and practically all the letters do indicate a genuine interest in the work of the organized bar. Let me read from a letter I received just the day before I left Billings, because this is typical of a good many.

This is a letter from an attorney in Kentucky. He says: "Both of us are from rural states and few large communities. I imagine you have heard the same thing many times that I have—the A.B.A. is a private club, operated for the use and benefit of large city lawyers who have already made theirs. What the hell is there in it for a country lawyer? I'll never go to annual meetings, so why waste my money belonging?"

It seems to me that Clarence Davis this morning in that very excellent report on the work of the American Bar Association to a very large extent answered that question.

Certainly since the reorganization of the Association in 1937 we cannot say that the American Bar Association in any sense is simply a club of large city lawyers. Actually, at the present time a far larger percentage of the membership comes from the rural areas than from the large cities. Insofar as the Board of Governors is concerned, at the present time four of the fourteen members are from cities under 100,000, three from large cities, and the other seven from medium sized cities. As Clarence told you this morning, in the House of Delegates, the policy-making body of the Association, we have representatives from all the state and local bar associations of any affiliated legal groups. And actually those groups represent far more in membership than those who directly represent the American Bar Association.

So I think we can say that today the American Bar Association is truly representative of the American lawyer, whether he comes from the largest city or the smallest village, whatever his geographical location, and also—and I think this is very important—he represents varied political, social, and economic beliefs.

I have been advised many times not to make too many speeches. In fact, Harry Tweed suggested half-seriously not long ago that we arrange for one nation-wide broadcast, invite all the lawyers to listen, and then let the President devote his time to administrative duties and to enjoying himself when he visited the various state bar associations. There is some merit in that suggestion, but of course it is impractical. The more practical suggestion is this: When you do talk, be brief, and talk about the objectives and the accomplishments of the American Bar Association. For time, will you keep track, Larry, so I won't run over thirty minutes. I'll try to watch it myself.

We have found this, particularly in connection with the campaign for funds for the American Bar Center, that the average, the average member of the American Bar Association has very little conception of the breadth, the scope, and the magnitude of our activity. But that is

understandable. With twenty-seven standing committees, twenty-nine special committees, seventeen sections with two hundred seventy committes, we are not surprised that James Grafton Rogers in a recent article in *The American Bar Journal* wonders whether any officer of the Association has any comprehension of the ramifications of the past and present activities of the Association. We like to think that Mr. Rogers is right also when he says that no other professional association, perhaps no national organization of any kind has done so much with so little money as the American Bar Association.

If that is true, it is because men like Larry Williams, George Turner, Clarence Davis, Paul Boslaugh, Bart Kuhns, and many others in the State of Nebraska, and their counterparts in every state in the Union are willing to devote their time unselfishly, often at their own expense for the advance of some project in the interest of the profession and also in the attainment of the great public objectives of the Association.

The coming year will witness the culmination of two of the most significant projects in the history of the American Bar Association. The first, of course, is the construction of the American Bar Center on the campus of the University of Chicago.

I think I will take just a minute on that Center. I don't think many lawyers realize just how desperately we do need a new headquarters building. Very few, probably, who are here have ever been in our present headquarters at North Dearborn Street in Chicago. It was acquired at a time when we had about one-third the membership and one-fifth of the activity that we have today. The situation is just about this desperate, that about two weeks when we needed to employ a new stenographer, there simply was not a place in the building where we could put in another desk and typewriter. We have used all the available space, including the hall. We have literally kicked out many of our affiliated organizations, and even the *American Bar Association Journal* is in an antiquated building across the street. So we do need a new headquarters, and need it very desperately.

In the next place, we haven't any place today to keep a library of the excellent bar material that has been accumulated—all the state bar associations, many local bar associations, Law Reviews, and things of that kind.

This new Center will provide a library where all that material may be assembled, catalogued, indexed, and will be available both for the individual lawyer and the bar associations throughout the country.

Then, most important of all, it will provide the facilities for research. Five different projects have already been approved; most important, of course, is the investigation in the field of improvement of administration of justice. Mr. Justice Jackson is Chairman of that very distinguished committee. Already we have a grant, a $50,000 grant

from the Ford Foundation for a preliminary blueprint or plan for that particular study.

So, with the American Bar Center we will have adequate facilities for a headquarters, for a library, and for research.

One of the other things that will be completed during the coming year is a survey of the legal profession. I recall that back in 1946 I happened to be Chairman of the Budget Committee of the Association, and in that capacity went with a group headed by Arthur T. Vanderbilt to the Carnegie Foundation seeking funds for that survey. I recall starting to tell them that we didn't have very much money. The president of the Foundation interrupted us right away and said that he wasn't concerned with how much money we put into it, provided we had enough in it to guarantee the interest of the American Bar Association, and provided we made certain that that survey would be absolutely objective. Well, we put in $10,000 a year for the past seven years. The rest has been financed by the Carnegie Foundation. But in addition, over four hundred lawyers have worked on that particular project, and over ninety per cent of them, including the Director and all the members of the Council have served without compensation. That work now is just about complete.

What do these reports which have been submitted by the various workers consist of? May I say, too, that all those who have worked on it have had complete academic freedom, so that we have maintained the idea of the Carnegie Foundation that it must be purely objective. First ,there are two books: One by Dean Pound on "The Lawyer From Antiquity to Modern Times"; one by Professor Sunderland on "The History of the American Bar Association," which, together, trace the evolution of the organized bar from the informal meeting of colonial days down to the highly representative group that Clarence Davis described to you this morning. There is another one by Ed Otterberg in the field of unauthorized practice, in which he traces unauthorized practice from the time that John Adams in colonial days started a one-man crusade against the pettifoggers, the deputy sheriffs, the bailiffs, and the tavern keepers who engaged in the practice of law at that time, down to the present time where we rely primarily upon the conference method, agreeing with statements of principle with the various groups that might otherwise be engaging in the practice of law, and, of course when necessary, resorting to litigation.

Then there are two excellent reports on Pre-Legal Education and Legal Education by Arthur Vanderbilt and Dean Harno. I think the concluding chapter of that report on Pre-Legal Education should be required reading in every law school in the country.

Then there is one by Judge Phillips and Judge McCoy on the conduct of lawyers and judges in which they end up with this question: How does the American lawyer stand in his community, both in-

dividually and as a representative of his profession? The answer is, Well, but not well enough. The reason he doesn't stand well enough, according to their conclusions, is the lack of an adequate program of public relations. And certainly you are to be congratulated here in Nebraska on the fact that you have instituted a new system of public relations, as we have at the American Bar Association.

Now, these are just a few of the one hundred fifty reports, some encouraging, some distinctly discouraging, but all pointing the way to the organized bar for more effective service, both for the public and for the profession.

This year the Board of Governors, the Committee on Scope and Correlation of Work, the Conference of Bar Presidents are all cooperating in formulating a plan to utilize and to implement the reports and recommendations of this survey for the good of the profession and of the public.

Now I presume that all of you who are members of the American Bar Association receive frequently, as I do, these two questions: What is the American Bar Association doing for the public? What is it doing for the average American lawyer?

As far as the public is concerned, as you know, we have five major, long-range objectives. I wish to call attention, just briefly, to each one of them.

The first is the preservation of representative government in the United States through a program of public education and understanding of the privileges and responsibilities of American citizenship. Working in that field we have four committees: Committee on American Citizenship, Bill of Rights, Individual Rights as Affected by National Security, and Communist Tactics, Strategy, and Objectives.

President Eisenhower reminded us in his address to the Diamond Jubilee meeting in Boston in August, that the role of the lawyer in the daily life of our nation and communities is vital to our democracy, and that the lawyer is the guardian of individual liberties granted under our Constitution, and that their defense is one of the main objectives of the Association.

A distinguished member of our American Citizenship Committee recently put it this way: Unless we preserve our form of government, everything else will collapse—our free enterprise system, our educational, our artistic, and our scientific institutions, and above all, our religious liberty.

I find as I go about the country that there is perhaps more interest in the work of our Committee on Individual Rights, and our Committee on Communist Tactics, and also more misunderstanding than in any other particular field. That is true both as far as the press and the members of the profession are concerned. Those of you who were in Boston will remember that in the adoption of those particular committee re-

ports we did have a sound balance between the protection of individual rights on the one hand and the safeguarding of national security on the other.

Not long ago in Albuquerque, New Mexico, I recall just before going into a luncheon talking with two lawyers. The first was a professor at the University of New Mexico. He was very critical of the Association, first because of its stand on the Bricker Amendment, but even more because he didn't think the Association was coming out strongly enough for the protection of individual rights. But strangely enough, the very next man that I talked with was thinking of resigning both from the New Mexico Bar Association and the American Bar Association because we weren't taking a strong enough stand against communism, and not adequately protecting our form of government.

Now, both of those men are mistaken. I think if you will read the reports of those two committees—I wish we did have time to go into them today—you will find that we have reached a sound and sometimes delicate balance between those two particular objectives. In fact, I think I am going to refer just very briefly to one resolution. Clarence Davis referred to some others this morning. This is a resolution of the Committee on Individual Rights. It recognized that the right of an accused person to the benefit of counsel, and the duty of the bar to provide counsel, even to the most unpopular, involves public acceptance of the correlative right of the lawyer to defend in accordance with the standards of the bar any client without being penalized by having imputed to him his client's reputation, views, or character.

Well, of course, this right has been recognized throughout history by the patriotic, conscientious lawyer. You will recall that John Adams after the Boston Massacre when the British soldiers were accused and were penniless—it was John Adams who perhaps stood as well and certainly was as patriotic and as courageous as any man of colonial times—it was John Adams, with the encouragement of his wife, who undertook their defense even though he was severely criticized by many of his fellow citizens.

With respect to this particular resolution, our committee said this: "There have been and will be numerous proceedings and trials conducted in order to protect our national security. In such cases the defendants must be properly represented, if our tradition of fair trial is to be maintained. It is in the interest of national security that they should be represented by lawyers of devoted loyalty to our system. Such lawyers will see to it that the defendant's rights are properly protected without turning the occasion into a circus. Furthermore, the very fact that such lawyers are willing to appear is added evidence of the strength and health of our system, a further good answer to the enemies of that system at home and abroad."

Now compare this statement, if you will, of our Committee on Communist Tactics: "At times the feeling has existed that some of the witnesses called before congressional committees and had refused to testify under the Fifth Amendment, did so on the advice of attorneys who were more concerned with aiding the Communist Party than protecting the basic personal interest of the witness. It has been thought that some of such witnesses, not knowing where else to seek advice, went to the very Communist Party under investigation. The bar, particularly through state and local associations, can and should render a distinct public service by publicly indicating its readiness, on request, to furnish a panel of attorneys which any prospective witness or any former member of the Communist Party may consult and from whom he can receive confidential, dependable counsel and guidance, based solely on the proper interest of the client. It is as essential to protect all citizens from unjust and unfair accusation as it is to study communist strategy, tactics, and objectives. It is obvious that the safeguards inherent in American citizenship are too precious to be subjected to hasty, ill-considered charges without adequate defense. Accordingly, legal representation of the highest order should be available upon request to any accused person, even when alleged to be a communist."

Observe the striking similarity between those two statements, one from a committee concerned primarily with the protection of individual rights, and the other concerned primarily with the safeguarding of national security and the combatting of communism.

So I say that I do feel that among those four committees we do have a well balanced program in that particular field. Certainly, we recognize the necessity of protecting the rights of all, including communists, but we must also recognize that if the communist philosophy should prevail, those Constitutional rights would be forever lost. Certainly, we recognize the necessity of protecting individual rights guaranteed under the Constitution, but at the same time we must be equally concerned with safeguarding our national security and with the defense of our American form of government.

It seems to me that there is a definite challenge to the organized bar and every individual lawyer to take his place in this particular problem which is so important in America today, namely, maintaining a balance between government and men, between individual rights and national security.

I've taken a little longer than I expected on that first objective. The rest of them I will cover very briefly.

The second is this: The promotion and establishment within the legal profession of organized facilities for the furnishing of legal services to all citizens at a cost within their means. We have three com-

mittees working in that field: Legal Aid, Lawyer Referral Service; and Legal Service to the Armed Forces.

Last year through Legal Aid Societies throughout the country over 350,000 cases were handled for persons who were unable to pay for legal services. The number of Legal Aid Societies has increased since 1946 when the American Bar Association started its promotional campaign from 69 to 132; and in addition there are 70 voluntary associations throughout the country. Of course, we intend to continue until all the larger cities have Legal Aid Societies, believing and recognizing that the legal aid is going to come in some form or another, either by government bureau or by the independent bar, and of course the American Bar Association and the entire organized bar believe that it should be handled by the independent bar rather than through any government agency.

As far as Lawyer Referral Service is concerned, I presume many of you have read the article in *Colliers* recently which contained an excellent description of the Lawyer Referral Service of the American Bar Association. You will recall that that article was entitled, "Are You Afraid of Lawyers?" It points out that the average person is afraid of lawyers, largely because he is afraid he is going to be overcharged. That has been the experience of the Lawyer Referral Service. In fact, in various communities from sixty to eighty per cent who come to Lawyer Referral Service are consulting a lawyer for the first time. Our surveys also show that even today throughout the country in real estate transactions only twenty-five per cent are handled by lawyers, and in the larger cities of the estates probated, wills, only fifteen per cent of the cases, and twenty per cent of those are holographic wills.

So there is a definite need today, whether it is done through Lawyer Referral Service or through an adequate public relations program to make clear to the public the nature and function of legal services, the importance of hiring a lawyer for those services, the basis of our charges, and the fact that over-charging is certainly the exception rather than the rule.

The third of our major objectives is this: The improvement of the administration of justice with selection of qualified judges and adherence to effective standards of judicial administrators and administrative porcedure.

We have nine sections of committees, all of them very active in that field. Of particular interest at the present time is the Committee on Judicial Selection, Tenure, and Compensation which is taking the lead in advocating increased salaries for federal judges, U. S. District Attorneys, and members of Congress. And of course, we in the American Bar Association are pleased at the action taken by the Nebraska Bar Association with respect to instituting the so-called American Bar

Association or Missouri Plan, or as you call it here, the Merit Plan. It is my understanding that you plan to take steps during the year to have that placed on the ballot of the 1954 election.

My time is fast drawing to a close. I am going to pass on now very briefly to the other objectives.

The next one is this: The maintenance of high standards of legal education and professional conduct to the end that only those properly qualified so to do shall undertake to perform legal services. In that field we have the section on Legal Education and Admissions to the Bar, the Committee on Continuing Legal Education. And certainly there is no more important work being carried out today than the institutes, work shops, etc., in this field of Continuing Legal Education. There is Professional Ethics and Grievances, Law Lists, Unauthorized Practice of Law. I am not going to discuss Unauthorized Practice today because that was covered very thoroughly by Clarence Davis in his report this morning, other than to say this. I was on the train the other day with Ed Eisenhower, who is a member of that particular committee, and he made this comment, that the longer he served on that committee the more impressed he became with this fact: That in addition to combatting unqualified, unauthorized practice of law, there is a correlative obligation on our part to see that we are qualified ourselves. You take the field of tax law, and if the accountants are better qualified to do a particular job, advise a client even on legal questions affecting taxation and the lawyers, then we are not in too good a position to complain about the work that they are doing. The same is true when it comes to estate planning. If a trust officer of a bank or a life insurance agent is better qualified to advise a client on the legal aspects of estate planning, then we are not in too good a position ourselves.

I think there is a lot in what Mr. Eisenhower has said, that there is a correlative obligation on our part to see that we are qualified, as well as to combat the unqualified and unauthorized practice by these other groups.

Finally, the fifth objective is this: The promotion of peace, to the development of a system of international law consistent with the rights and liberties of American citizens under the Constitution of the United States.

Under that we have our section on International and Comparative Law and our Committee on Peace and Law Through United Nations. Those two groups don't always agree. They didn't on the Bricker Amendment. Ordinarily in cases of disagreement, the House of Delegates has gone along with the Committee on Peace and Law Through United Nations. But I think the important thing is this, that we have had an intelligent and constructive presentation of the respective positions, even where there has been disagreement between the section and

committee. Of course, more often than not they agree, but as in the case of the Bricker Amendment they have also disagreed.

Our final objective is more in the way of procedure than substantive, the coordination and correlation of the activities of the entire organized bar of the United States. We certainly recognize that the job cannot be done by the American Bar Association alone, but only through the cooperative efforts of all the state and local bar assocations and affiliated legal groups, as well as the American Bar Association.

Now, just one more thing. As I mentioned a while ago, we have seventeen sections of the American Bar Association. Ten of those sec tions are the so-called "bread and butter" sections, and it is those sections which primarily answer the question of what the American Bar Association is doing for the average American lawyer.

Let me refer just very briefly to one section, one with which we are all familiar, the section of Taxation which I think has been aptly described as "The People's Tax Attorney." Not long ago on the floor of the House, Congressman Reed made this statement: "The Tax Section of the American Bar Association deserves the highest praise for its constructive work in this field. These distinguished lawyers have devoted themselves unselfishly to this task, not in the interest of their client, but in the general public interest of making our tax laws equitable in their application and better in their administration."

What has this Tax Section accomplished? Of course the most important single item has been in connection with the marital deduction for income splitting in connection with income, estate and gift taxes. There are many others that we won't have time to discuss here today with which you are familiar.

Not long ago I saw the report of this section to the present session of Congress—twenty-three specific recommendations presented by five or six experts in that field I think we can safely say that a former President of the American Bar Association was correct when he said recently that in recent years the Tax Section has fully, in itself, justified the existence of the American Bar Association and its support by the American lawyer.

Or take the Section on Insurance Law. Many of you here today have belonged to that section, as I have, since it was organized back in the early 1930's. I know you will agree with me that every year, through the reports of the proceedings, through the annotations of the various standard policies you get back many times over the cost of the membership dues and section dues from that one section alone.

Personally, I don't see how anybody who is practicing tax law can afford not to belong to the American Bar Association and the Section on Taxation. I don't see how any one who is engaged in insurance law practice, on either side, can afford not to belong to the American Bar Association and the Section on Insurance Law. And the same is true

for every one of the other so-called "bread and butter" sections—Mineral Law; Corporation, Banking, and Business Law; and all the rest of the ten "bread and butter" sections.

There is one other thing I would like to mention, and that is this, that more and more the American Bar Association is being consulted by both the executive and legislative branches of the federal government. I have been surprised during the past three months at the requests that we have received from both branches of the government for our views on various questions of legislation, and also for the appointment of various advisory committees. I think the last one was from the Currency and Banking Committee of the Senate. Senator Capehart, Chairman of that committee, requested the recommendation of three members to serve on advisory committees in connection with foreign trade. Those recommendations were made, and Senator Capehart in acknowledging receipt of our recommendations and thanking us for them made this statement: "For over one hundred fifty years, since the inception of our Republic, lawyers have made vital contributions to the drafting and amending of our laws. In recent years the American Bar Association, with its numerous sections and sub-divisions into committees, has developed into a veritable university of seminars and study groups, exploring the practical application and improvement of almost every branch of the law. During the last year, and continuing as of this moment, the participation of the American Bar Association in the study of the Bricker and other amendments pertaining to the possible amendment of the Constitution in respect to the treaty-making powers of the President, without reference to whatever position is finally taken by the Bar Association, has helped immensely in carrying the debate to the American people in terms which they can understand. This type of collaboration between your Association and both Houses of Congress in bringing to bear the talent and ability of your membership upon the problems which confront Congress is highly desirable and ought to be extended." Of course, we hope very much that it can be extended.

Not long ago in my own state, in soliciting contributions for the American Bar Center I wrote a young lawyer in a small town who is not a member of the Association, and by return mail I received a check for $50.00, payable to the American Bar Foundation. Of course, I felt that that fellow was a good prospect for membership in the Association, and I sent him an application blank. He sent it back with this reply: "I think the American Bar Association is doing a fine job. I am perfectly willing to contribute financially to the American Bar Center, but I don't have the time or the opportunity to participate in its activities, and consequently I don't feel that I should join the Association."

I have no doubt there are many others who share that viewpoint. But it seems to me that it is shortsighted. I know something about that young fellow and the nature of his practice. I know that purely from

the standpoint of dollars and cents he would get back every year many times his dues through membership in the Section of Taxation, Real Estate, Probate, and Trust Law, and Mineral Law, because those are the particular fields in which he is engaged. I know also that he would be stimulated by articles in *The American Bar Association Journal* and the other publications of the American Bar Association. But above all, I know that he is a public-spirited, civic-minded lawyer and citizen, and I know he would derive satisfaction, as many of us do, from participation even indirectly in the attainment of the great public objectives of the Association.

True, we can't all attend annual meetings. In Boston, the largest in the history of the Association, less than ten per cent of the members were able to attend. The situation is helped to some extent by the regional meetings, but even with regional meetings and the annual meeting combined, less than twenty per cent of the members of the Association are able to attend. But certainly all of us can participate indirectly through the payment of our dues, through our moral support, and through working on the local level in state and local bar associations in this great program of the organized bar both for the benefit of our own profession and the public.

With the new Bar Center providing adequate physical facilities, with the survey of the legal profession providing the factual information and data necessary for us to formulate a more constructive program, and with an expanded membership, certainly the organized bar, the American Bar Association, the state bar associations, the local bar associations working together can do a more effective job both for the profession and the public.

We are today in a transition period, and I have no doubt that if we can get an increased membership, we can enter this new era of service, pass from the era which we have gone through, the era of federation, to a new era of national and public service where we will do a better job both for our American lawyers and for the public.

... The audience arose and applauded ...

PRESIDENT WILLIAMS: Mr. Jameson, there is no need for me to attempt to express to you our appreciation of your presence and of your address. The rising applause of the audience spoke it far better than I could do.

Ladies and gentlemen, we are adjourned.

SECTION PROCEEDINGS

Thursday, November 12, 1953
Section on Insurance Law
Charles A. Nye, Chairman

"Spotlighting the Automobile Policy".....DR. CURTIS M. ELLIOTT
Lincoln, Nebraska
Professor of Economics and Insurance
University of Nebraska

"A Lawyer Looks at Settlement Technique and Procedure" .....EMMET S. BRUMBAUGH, ESQ.
Omaha, Nebraska
Member of the Omaha Bar

"A Claims Man Looks at Settlement Technique and Procedure" .....L. R. BOWKER, ESQ.
Omaha, Nebraska
Chief Claims Attorney and Manager of Claims
Department for National Indemnity Co.
Member Nebraska Bar

"Trends Which May Influence the Future and Nature of Automobile Liability Litigation".....W. J. HYNES, ESQ.
Des Moines, Ia.
Secretary of Employers Mutual Casualty Co.
Member of Iowa Bar

SPOTLIGHTING THE AUTOMOBILE POLICY

By

Dr. Curtis M. Elliott

The first automobile liability policy in the United States was written on February 1, 1898, the first automobile collision policy in 1899, and the first material damage policy in 1902. From a rather humble beginning the automobile coverages evolved in a somewhat haphazard manner resulting in the so-called combination policy of today. This modern contract may be characterized as a long and complicated document, and a proper understanding of the nature and limitations of the coverage requires a careful study and an analysis of the contract in its entirety rather than on a piecemeal basis.

The automobile policy is a combination of three distinct types of insurance, each having its own peculiar characteristics of coverage, conditions, and limitations. The liability coverages—bodily injury and property damage legal liability—are essentially casualty insurance; medical payments, is accident and health; and the material damage

coverages—comprehensive, collision, fire, theft, transportation—belong traditionally to the fire insurance field. The combination of these separate and somewhat unrelated coverages has made analysis and interpretation of the automobile policy a difficult and laborious task and any attempts to do so must carry an admonition for the neophyte: proper analysis of any clause requires not only an understanding of the fundamental type of insurance involved, but an appreciation of all related parts of the contract.

A complete analysis of the automobile policy is impossible here, but some of the more important sections may be selected for particular attention. The medical payments coverage is significant not only because of the peculiar nature of the coverage in the automobile policy, but because of its rather recent introduction into the contract. The coverage may be paraphrased as follows: the insurance carrier agrees to provide indemnity for all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical, ambulance, hospital, professional nursing and funeral services, to or for each person who sustains bodily injury, sickness or disease, caused by accident, while in or upon, entering or alighting from the automobile if the automobile is being used by the named insured or with his permission.

The coverage does not exist for the purpose of taking care of legal liability. Indemnity will be provided regardless of the legal liability of the insured just so long as the injury is the result of an accident and the injured person is in, upon, entering or alighting from the automobile. The medical payments coverage then has a distinct similarity to the coverage in an accident insurance policy. The absence of the right of subrogation is conclusive proof of this intent. This means, for example, that an injured person may collect medical payments indemnity, and may then collect full damages from a negligent party without reference to the amount collected under the medical payments coverage, just as if an accident insurance policy existed in lieu of the medical payments.

The comprehensive coverage is probably the most important material damage coverage in the automobile policy. It is to be interpreted as an "all risks" coverage, which means that all material damage losses to the insured automobile are covered except those that are specifically excluded. The promise of the insurance carrier is to pay for any direct and accidental loss of or damage to the automobile except loss caused by collision or upset. Breakage of glass and loss caused by missiles, falling objects, fire, theft, explosion, earthquake, windstorm, hail, water, flood, vandalism, riot or civil commotion shall not be deemed loss caused by collision or upset, which means that these causes of loss plus anything else not specifically excluded are covered under comprehensive. The inclusion of losses such as those caused by or result-

ing from cigarette burns on the upholstery, spots on the upholstery, animals, and many others makes comprehensive an extremely broad coverage.

The distinction between comprehensive and collision or upset is one which in borderline cases may cause considerable difficulty. The determination of whether a loss is one or the other is important since collision is usually written only on a deductible basis while comprehensive provides full coverage. As an example, suppose an insured is driving down a back road in deep ruts and the oil pan scrapes over a rock embedded in the road, puncturing it. As a consequence, all the oil leaks out and before the insured becomes aware of the situation, considerable damage results. This loss undoubtedly would fall in the category of collision since the insured automobile accidentally came in contact with a stationary object. However, if the rotating wheel had caused a loose rock to flip up and puncture the oil pan, the loss would be comprehensive since the rock would be classified as a missile rather than a stationary object. This example illustrates the fact that considerable care should be taken in attempting to distinguish between comprehensive and collision. The intent, as shown by the list of perils in the comprehensive clause, even though not all inclusive, should be considered carefully before any conclusions are drawn. In the example, the damage caused by the loose rock was considered to be a comprehensive loss since, in the definition of the comprehensive coverage, damage caused by missiles was not deemed loss caused by collision or upset.

It might appear absurd to propose a discussion of the definition of the insured automobile, yet many misconceptions exist merely because of a failure to consider all the sections of the policy which have to do with the definition. In Insuring Agreement IV, the automobile is defined as the motor vehicle or trailer described in the policy. Taken alone, this description is rather meaningless and does no more than limit the insurance coverage to a specifically described automobile. A more accurate description is necessary.

There are at least four other sections of the policy which throw some light on the nature of the automobile. The first, and probably most important, is an insignificantly placed clause in Insuring Agreement IV stating that the word "automobile" also includes under the material damage coverages, its equipment and other equipment permanently attached thereto. Apropos this clause, we may conclude then that the coverage for the described automobile includes coverage for damage to its equipment, such as chains, and to other equipment permanently attached thereto, such as an outside rear view mirror. This is important information especially in connection with the theft coverage on the automobile.

The definition of the automobile as the described vehicle and its equipment does not solve the problem of definition completely. What we mean by equipment, may be a debatable question. The usual interpretation includes those things which a car owner could normally expect to possess as equipment, depending somewhat upon the use of the car and the geographical location. For example, a car owner would expect to have a spare tire, and if this tire were stolen, the loss would be covered under theft. At the same time, if the car were operated under conditions requiring the use of mud-grips a reasonable proportion of the time, then standard equipment could include three spare tires.

The word automobile is further defined as including a utility trailer but only for the bodily injury and property damage legal liability coverages and medical payments. A utility trailer does not refer to any type of trailer, but only to one that is designed for use with a private passenger automobile, is being towed by a private passenger automobile, and is not a home, office, store, display or passenger trailer. If the trailer meets the conditions described in the definition, then it is to be considered a part of the automobile. For example, a concrete mixing machine equipped with a trailer hitch would be considered a part of the automobile for legal liability and medical payments coverages so long as it is towed by a private passenger automobile.

The definition of the automobile also includes under certain circumstances vehicles not described in the policy. A temporary substitute automobile—one not owned by the named insured while temporarily used as a substitute for the described automobile while withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction—is covered under the legal liability coverages and medical payments. A newly acquired automobile is automatically insured for all coverages in the policy if the insured notifies the company within thirty days following the date of its delivery to him, and if either it replaces an automobile described in the policy or the company insures all automobiles owned by the named insured at such delivery date.

The most important circumstance under which a vehicle not described in the policy is included in the definition of the automobile, appears in the drive-other-car coverage in Insuring Agreement V. Here, any car operated by the named insured or spouse is included in the definition for bodily injury and property damage legal liability coverages and medical payments. However, certain limitations restrict the use of other cars, the most important excluding coverage for frequently hired cars, cars furnished for regular use of the named insured or a member of his household, other automobiles owned by the named insured or members of his household, and automobiles used in the busi-

ness or occupation of the named insured or spouse except those of the private passenger class.

A cursory analysis of the more important provisions of the automobile policy would not be complete without at least some reference to the "omnibus" clause. Here, in Insuring Agreement III, is the definition of the insured, and a careful reading and analysis of this clause is necessary for the purpose of eliminating some rather gross misconceptions concerning those persons who may be considered as insureds under the policy. The word insured obviously includes the named insured. It also includes any person while using the automobile with the permission of the named insured, and any person or organization legally responsible for its use. It is the latter part of this definition which many people seem to ignore or to misconstrue. The intent is simple. An employee using his own automobile in the business of his employer is acting in an agency capacity, and the employer as the principal will be responsible for the negligent acts of his agent. Since the definition of the insured includes any person or organization legally responsible for the use of the automobile, the principal automatically will be provided the same protection under the policy as that granted to the employee as the named insured in the contract. This protection is provided without the necessity of naming the employer as an additional insured in the contract.

This discussion of some of the important aspects of the automobile policy is not intended to be exhaustive. But a somewhat desultory treatment may be useful for those whose knowledge of the contract is limited or gained only on a piece-meal basis or from an infrequent reference to a few of the policy provisions. From this discussion one may conclude that the automobile policy is not a logically developed contract, but may more aptly be described as a congeries. It includes casualty, accident and health, and fire and marine coverages. The definitions in general do not provide careful and accurate delineations of coverages, nor do they provide descriptions of such important items as the automobile and the insured with sufficient precision. In addition, an analysis of many clauses and definitions requires a careful search to bring together all related elements scattered throughout the contract.

In spite of these shortcomings, one must appreciate the fact that the development of a simple and indisputable insurance contract providing coverage for the ownership, maintenance and use of an automobile is a difficult, if not an impossible, task. Therefore, the insurance industry can continue to provide this important protection only so long as all interested parties, including those in the legal profession, are willing to interpret the intent of the contract in a reasonable manner and, if necessary, to consider a reasonable compromise as a practical substitute for strict precision.

A LAWYER LOOKS AT SETTLEMENT TECHNIQUE AND PROCEDURE

By

Emmet S. Brumbaugh

It was certainly in one of my weakest moments that I accepted the invitation of our most affable chairman to speak on the subject assigned to me today. There is no role I've tried to perform in 39 years of practice in which I have succeeded less than in procuring adequate compensation for a claimant by settlement. And now today as I look over the personnel in front of me, is there any question but what it is I that should be listening and one of you on this platform. The very wording of this text—"A lawyer looks at settlement technique and procedure" seems to infer I can pull a rabbit out of a hat and am possessed of a whole bag full of tricks. But I've discovered no rabbit and the bag is empty.

This is going to be as dry as dust and I'm sure, Mr. Chairman, you, our audience and I are all going to feel very much like a client my former partner, Judge Gray, used to speak of. His father had died and he having been nominated executor in the will petitioned its admission to probate and his own appointment as executor. His brothers and sisters contested the will and objected to his appointment. The will was admitted to probate and he was appointed. Then came a flock of claims against the estate which he was forced to resist. His final report had been filed and he thought his troubles were over, when on the day before hearing thereon, objections were filed to it. It was then the client said in a mournful voice: "Judge Gray, you know sometimes I just wish the old man hadn't died."

So, to some of you the most I can hope to do is to remind you of some routine things you've known all the time; to the rest of you, I am probably helpful, if at all, in pointing out what I have done but which you should not do, rather than in charting a course to easy money by way of settlement.

There is one other thing about the theme assigned that needs correction. As expressed, it might justify a broader application than is appropriate to a section on insurance, and likewise as it comes from me, whose experience in insurance defense work includes no casualty companies and only two life companies, where all matters of settlement are dictated at the home office.

So, our chairman has consented to my restricting my treatment of the subject to—

> "A plaintiff lawyer looks at settlement technique and procedure in claims for wrongful death, personal injuries and property damage in traffic accidents."

In all that follows, I am presupposing that the plaintiff lawyer is keeping abreast of statute and decision law upon which legal liability must be predicated.

A law suit has been defined as a search for the truth. Can a lawyer truly represent a plaintiff client and approach the possibility of settlement without likewise making such a search? It seems to me the answer is obviously, No. If so where must we look for the source of such truth and is there a fixed pattern to be followed?

A friend calls you at your office or at your home, reports that a member of his family has been killed that day in a traffic accident and asks you to protect the family's interest. With the details of funeral and burial for him to attend to, along with other matters involved in such an experience, is it either necessary or in good taste to suggest a preliminary conference at your office? Some facts must be had, it is true— where and when did this happen? Was deceased on foot or in a car? Who was the owner and operator of the car or cars and what was done with the car or cars following collision? Those facts can be acquired in the telephone conversation referred to.

With these basic facts in your possession, is it not the logical approach to then first inspect the place of accident, the car or cars involved, and having photographs taken if such inspection reveals physical facts throwing any light upon the element of legal liability or property damage, thereby preserving important facts for consideration with your client and possible witnesses at a later time and for use in trial, if the matter proceeds that far. Then follows examination of police records for names of witnesses, etc., a canvass of the neighborhood for other witnesses that might have been overlooked and the procuring of statements, preferably with the use of an official court reporter of all such witnesses, including the potential defendant, if not yet represented by counsel, discovering from him if possible, the ownership and name of operator of car with whom his name has been associated, of its coverage by liability insurance and the amount thereof. Interview the doctor or doctors in attendance upon deceased between time of collision and death, learn from him the injuries sustained and the reported cause of death. It is to be observed that all of such matters can be thoroughly checked before any further contact is made with deceased's family including the party inviting you to protect its interests.

By this time the family is doubtless ready to confer with you and, in such conference, you will have the assistance of the pictures taken and perhaps of a plot of the locus drawn to scale, and the statements of witnesses previously taken. Your diligence should insure your employment on terms satisfactory, with later ratification by the duly appointed personal representative of the deceased.

At the same conference with the family, statements may be taken of other possible occupants of the car containing their version of the collision; also facts pertaining to deceased's age, occupation, earning capacity, state of health at time of collision and the names, ages and relationship of persons wholly or partially dependent upon deceased for support and maintenance and of medical and hospital and burial expense; and, if property damage is being claimed, a basis therefor.

Analysis of the foregoing should furnish a basis for the amount to be claimed whether through settlement or suit, keeping in mind any legal precedents comparable, and keeping in mind too that our pay off today is in fifty cent dollars.

If instead of wrongful death, the claim is one for personal injuries and/or for property damage, except for the order followed, and differences in elements of damage existing, the approach to the problem and analysis of facts upon which legal liability must be predicated and damage determined, is essentially the same.

With the claim now ready for either filing or settling, which approach should be made. Upon what does that choice depend?

We shall doubtless not include all the factors upon which every such decision must be made. In fact each case has factors either peculiar to it or in peculiar and unusual combination with other factors, so there is no exact pattern for you and your client to follow. One family may abhor the thought of prosecuting in open court a claim for damages arising out of the death of a loved one; another may be so desperately in need of cash to meet outstanding obligations as to be unwilling or unable to await the delays and uncertainty of litigation; while another may have the sights set so high or is so willing to gamble, that settlement is out of the question. While giving due respect to such predispositions, as plaintiff lawyers, we should tactfully present the factors which such extremes ignore,—at the same time ourselves discovering matters of family background which are properly to be considered. Counsel should consider and cause his clients to likewise consider the financial standing of opposing party, factors, if any, affecting his standing in the community, his insurance coverage, if known, the reputation for fair dealing of such insurer, its local adjuster and of the attorneys, if known, that will defend, and the possibility that upon facts existing, said opposing party might make claim and place the same in suit either originally or by way of cross petition.

Then, too, there are factors, personal to the lawyer. His rent may be overdue, he may owe the bank with little chance of securing an extension of time in which to pay. Settlement to him may seem the logical solution. We cannot deny the fact that with most of us, there have been times when such considerations weighed heavily.

I have already indicated I have not accomplished too much through

settlements. As I look back I think my attitude towards settlement might have been different but for some early experiences.

You will pardon my referring to the following three experiences. I have no doubt it accounts for the comparatively few settlements I have made and like experiences of others may account for their attitude as well. The first was in connection with my first personal injury claim. I had been dipping down into the resources accumulated before hanging up my shingle. I wasn't sure whether I could weather the storm.

My client was a poor Polish family, living as a squatter on city property, adjacent to railroad property. A flat car had been switched through an open track, through a fence surrounding the railroad property and against the house of my client back of the fence, wrecking the house, injuring the wife and killing geese, ducks, and chickens belonging to the family and in the yard. My client wanted compensation, not too much, but quick—and I needed a fee, not too big, but quick. So, in what I considered a letter carefully delineating the outrage sustained by my client, and duly emphasizing my contractual right in any adjustment made, I wrote the claim department I fully expected an answer by return mail or a visit of a distraught claim man to my office. Instead, a week or ten days later, I was advised that my clients at the time of said writing were in the claim department office —that a doctor and not a lawyer was needed by the wife—and that the legal rights of my client would be settled without my assistance.

I don't believe I quite recovered my original attitude towards the place of compromise in the scheme of things even though my client returned to me and in an action brought, judgment was collected for three times the amount for which it could have been settled. I had learned that the ethics proclaimed is not always the ethics practiced. But I had also tasted the satisfaction of a victory in what I deemed a just cause.

The impression thus created was not improved when upon a later occasion with a suit on file, I found a member of the same claim department in the hospital room of my client discussing settlement of the case, which when later tried resulted in a judgment affirmed for $30,000; nor again, when a suit was brought for an opposing party, while I was being enticed into the belief, I had settled the matter with his insurer, thus putting me on the defensive in a cross petition. In that action with all the injuries and the major part of property damage, my client recovered nothing.

Notwithstanding those experiences and a few others of similar pattern, I have learned such practices are the exception and not the rule; that where there is one claim man that adopts such methods there are a score that operate open and above board. But, as plaintiff's attorney, can one jeopardize his client's interest in the one claim the client may

ever have and a claim which may be of all importance to him, by assuming you are dealing with one of that score, only to find out after your client has been sued, that you were dealing with the one you could not trust.

I am only referring to these personal experiences as the basis for an early belief that both the plaintiff and his counsel generally are better off in a case worth while to file suit and prosecute the same to judgment and it is extremely hard for me to forget that first impression. Especially do I believe that the young lawyer profits in the end by litigating. Not only will he improve with the trial experience he gets and acquire clients who need an able trial lawyer from among the witnesses and jurors who observe his ability and courage, but he will be compensated in other ways than in the cash received— in the thrill of matching wits, the satisfaction resulting from having done his best even if not in full measure successful; in having convinced another lawyer, perhaps older, more experienced and of greater reputation, that he has met a worthy foe and one to be respected hereafter. To me these rewards of the lawyer, if not to the disadvantage of his client, more than balance the extra work involved in trying a case over settling same.

So, with a good cause of action and the client not insisting on settlement nor compelled by circumstances to settle, my choice of procedure is to file suit and let the approach to settlement come from defendant. That is especially true where my client has been approached about settlement before employing me. In that case we have the reaction of both parties. Age and health of the client, time required to get the cause up for trial and the jury appeal of the parties are other factors that must be considered.

If the day of trial has arrived and no settlement made, an assignment of the cause to a certain court or the type of jurors from which the twelve must be chosen, may exert a last minute change of attitude.

Again, the increasing difficulty in securing the cooperation and attendance of medical witnesses may become a deciding factor. Not so long ago having tried in vain to arrange an appointment before trial with the surgeon in the case, I began trial upon his assurance of meeting me at his office on the evening of the first day of trial. Not only was he not there at the time agreed upon but he broke two other appointments and then instead of coming to court personally, sent his associate who had assisted in the operative care of plaintiff. If known far enough in advance such a situation would have justified if not compelled more consideration of settlement. If it were not from reports from opposing counsel that they, too, are having their troubles in producing medical evidence, it might be assumed that, if not already on the staff of defendant's insurer, plaintiff's doctor, in the illustration above given, hope to be.

In closing, may I suggest that unless doctors, in some way can be more impressed with their duty to respond as witnesses, if not out of loyalty to their patient through their sense of civic duty, then personal injury business like that now covered by the Workmen's Compensation Law, is being lost to the legal profession and whether we consider the best approach in representing our client, trial or settlement, makes but little difference.

A CLAIMS MAN LOOKS AT SETTLEMENT TECHNIQUE AND PROCEDURE

By

L. R. Bowker

In discussing the subject, I get the impression that the listeners know more about it than I do, because I never talk to an attorney without that feeling. I have pondered the subject and have reached the conclusion that there can be no intelligent negotiation of settlement of a claim unless there is an adequate investigation and with that I would like to speak for a few moments on the preparation, so to speak, of negotiation.

First, let me say in my more than 20 years in the business of negligence law, 16 years of which have been in direct association in the insurance industry, I have not experienced, nor have I personally known, of a company suggesting or even intimating that a company representative conduct himself on anything but the highest plane in dealing with a claimant or his representative. The genesis of the word "adjust" comes from the Latin, ad meaning to and just meaning right, which is indicative of the insurance industry's attitude toward the public. I do not mean to say that I have never seen evidence of "sharp practice" by those who call themselves adjusters, but I can say that it has not and is not condoned by the management of the various insurance companies. Such short sighted practice when indulged in has usually been by one new in the business who ultimately learns that his company or principle does not approve of a practice that reflects upon the good name of the company. I know that some of you have probably had experience that would appear to make me seem naive, but I say again that it was an individual experience and one not approved or condoned by the superiors of the individual with whom you had the unfortunate experience.

I have sat in on claim conferences with many companies and have found without exception that the policy is to preserve the assets and the integrity of the company, but above all to treat the public fairly at all times.

Now to the subject, first and foremost, in order to negotiate we must have a reliable investigation. A seasoned adjuster is not to be taken lightly, they are intelligent and resourceful individuals, who must at all times operate on the theory that there are more good people than bad people. Were it not so, one would become cynical and when one becomes cynical in the adjusting business they lose their effectiveness. A competent adjuster must maintain at all times a fair and impartial attitude.

As an example of what I mean by a a capable investigator, I would like to relate an experience of my knowledge. At one time, I had an adjuster under my supervision who was also an amateur photographer. In making a routine call upon a claimant (the cognomen of all people having claims) he observed that his hands appeared to be calloused. Since the claimant was supposed to have an arm so badly injured that he could not use it, the adjuster became a bit suspicious. After leaving the home of the claimant, he went around the block and observed that there was a garage being built on the back of the claimant's property. It so happened that there was a railroad that passed along the rear of the claimant's property and afforded a very good point of vantage to observe the building of the garage. With one of his colleagues, the adjuster contrived to keep the claimant under surveilance. They rigged themselves out in the garb of civil engineers, placed a movie camera upon a tripod with a tele-photo lens and did considerable surveying up and down the railroad behind the claimant's property. They were able to get excellent moving pictures of the claimant digging the foundation, climbing ladders and doing carpentry work usual to the construction of a garage.

With this evidence, because the attorney representing the claimant was an honorable man, a fair and reasonable settlement of the claim was made, of what otherwise might have been a very expensive claim.

I would list the following outline as a guide:

1. Investigation:
   - (a) Ingenuity and industry of investigator
     - (1) Statements—narrative—question and answer
     - (2) Friendly witnesses
     - (3) Hostile witness
     - (4) Photographs
     - (5) Plat of scene
     - (6) Investigating officers
     - (7) Ordinances—rules of road

II. Evaluate liability
   - (a) Check coverage
   - (b) Maintain friendly relations with claimant
   - (c) Determine what claimant has in mind
   - (d) Amount of special damages; Certain—probable

(e) Injuries
(f) Status of injured
(g) Treating doctor
(h) Type of insured
(i) Submit to superiors

III. Settlement Negotiation
(a) Claimant
(1) Literacy of claimant
(2) Financial status of claimant
(3) Conclude settlement or procrastinate
(b) Counsel
(1) Experience of counsel
(2) Condition of Court Docket
(3) Timing
(4) Cost of Defense
(5) Odds for and against successful defense
(c) Suit Filed
(1) Submit to trial counsel
(2) Preparation for trial
(3) Jurisdiction
(4) Current trends of litigation
(5) Ultimate cost
(d) Trial
(1) Appraisal of jury
(2) Proof

I would like to discuss briefly the outline in chronological order.

I have already given you an example of the ingenuity and industry of an investigator in collecting evidence. The first thing in an investigation however, is to obtain the facts and that can only be done by taking statements, either narrative or question and answer. I prefer question and answer statements taken by a court reporter, though there are many cases that do not warrant such an expense, but in a serious case I am sure that you will find court reporter statements more satisfactory than any others.

Friendly witnesses: It is just as important to get statements from friendly witnesses, while they are friendly, as it is to get statements from hostile witnesses because many times friendly witnesses eventually or before trial become hostile or lose interest in a case where they can expect no direct benefits. It is good practice to take statements from friendly witnesses even though they are negative statements.

Hostile witnesses: An adjuster is not what the name implies unless he can obtain statements from hostile witnesses. It is preferable, of course, to take court reporter statements from these witnesses as it is much more difficult to get them to sign a statement. Some people

prefer to call the statements reports as they believe it is a psychological advantage in getting a signature.

Photographs: There is an old cliche that says that one picture is worth a thousand words and I do not think that there is anyone that will gainsay that. Photographs speak for themselves and most adjusters today carry a camera with them at all times. Having a camera at their disposal has made many cases much easier to negotiate and, in fact, has saved much time and expense by avoiding litigation. A camera is an adjuster's best friend.

Plat of scene: An engineer's plat of the scene of an accident, if satisfactory photographs are not available, is the next best thing to actual pictures.

Investigating officers: Because police officers are usually the first experienced persons to arrive at the scene of the accident, they can prove to be a valuable fund of knowledge. Unfortunately, they are usually the most difficult to interrogate. There are many different approaches to these fellows and I leave it to the ingenuity and resourcefulness of the particular investigator to obtain the desired infromation. As a rule, ambulance drivers and such other similarly trained individuals are not good sources of information, because they are trained to render aid to the injured and are usually oblivious to everything else.

Ordinances—rules of the road: It is essential to a good investigation that the various rules of the road be covered thoroughly in order that the information will be in the hands of the supervisors and the legal department of the company or principle.

EVALUATE LIABILITY

Check coverage: There are several different kinds of coverages that can be involved in one particular accident and since most risks are assumed on a specific or scheduled basis, it is essential that coverage for a particular unit or premise be established.

Maintain friendly relations with claimant: An adjuster's job is to obtain the facts and in doing so, he must be objective in his efforts to establish the true facts and not assume that because he represents one interest that all other interests are to be condemned. Basically, an adjuster must be a salesman and impute confidence. To do so, he must assume that there are two sides to every question and conduct himself accordingly.

Determine what claimant has in mind: Because the adjuster's superior or principle must see the case and evaluate the liability through the eyes of the adjuster, he must know something about what the claimant thinks of his case. To know what a claimant thinks about his case can many times result in a prompt settlement. The companies are always interested in what is called a "first call settlement" and if

the adjuster has done his job well and the claimant is reasonable, many cases can so be disposed of without the necessity of a continued and laborious investigation. In fact, I believe cases that do not involve serious personal injury can be disposed of more favorably to the claimant at that time than later because the companies would rather pay the claimant a little more and see him satisfied than to incur additional expense for investigation and negotiation.

Amount of special damages: Certain-probable: In order for the companies to establish an adequate reserve on their files and be prepared to make a reasonable settlement, it is important to know the special damages, both certain and probable.

Injuries: Injuries are usually divided into two catagories, subjective and objective. Objective injuries such as fractures are not too difficult to evaluate because they usually follow a pattern, but subjective injuries create another problem. Women seem to suffer with subjective injuries much more than men and usually have a longer period of convalesence. I believe that women, especially maiden ladies of the age of 50 or more are the most difficult to evaluate. I could dwell upon this subject at length, but time does not permit. Suffice it to say that I believe they are the most expensive and most unsatisfactory cases to negotiate.

Treating doctor: The treating doctor is the most important key to any case. I think it can be safely assumed that one has more confidence and respect for one's family doctor than any other person, save possibly one's minister, priest or rabbi. Consequently, it is of paramount importance to maintain friendly relations with the medical fraterity. Unfortunately, this cannot always be done and when it cannot be accomplished, a satisfactory conclusion of any case is going to be most difficult to attain. I recall a recent case where the company was willing to pay the maximum with a minimum of delay, but because the treating doctor had placed a value on the case beyond the most extreme, litigation ensued and the claimants received something less than they would have upon settlement of the case. Please do not misunderstand that I am making any disparaging remarks about the medical fraternity, but I point this out to you as an example of the confidence and respect that patients have for their doctor. The treating doctor is a most intangible element in the life of an adjuster.

Type of insured: Experience has taught us that taxicabs and commercial operators are more difficult to defend than what we call "private pleasure" operators. So far as commercial vehicles are concerned, except taxicabs, the accidents usually occur in foreign jurisdictions and with the attendant expense of litigating such a case, they usually have more value than cases involving local people. I do not mean to imply that the company will pay a claim for reasons of economy alone, but it is something that must be considered in evaluating a claim. If a

claim is fraudulent, however, a company will spend many times what it could be settled for rather than encourage that type of claim.

Submit to superiors: After a claim is fully investigated and the adjuster has correlated all the information, it is usually submitted to his superior or to his principal with his recommendations. The claim is then examined and sometimes re-examined by others in the home office or the branch office of the company and the local adjuster is given the benefit of the experience and advice of those who have reviewed the claim and authority to either settle or deny the claim.

SETTLEMENT NEGOTIATIONS

Literacy of claimant: The adjuster in his first approach to negotiation of settlement, must consider the literacy of the claimant and negotiate with him at his level. If the claimant is illiterate, in order to avoid any later allegation of taking unfair advantage, the claimant's doctor, his rabbi, priest or minister is enlisted to assist the claimant. One of the most difficult claimants to negotiate with, however, is the one that is of the opinion that he knows more about his case than his doctor, his lawyer or the adjuster. To say that " a little knowledge is worse than none at all" is an understatement, but patience and flattery will usually prevail with this type of individual.

Financial status of claimant: It goes without saying that an experienced adjuster can easily sense the financial condition of the claimant and can exploit it to the full advantage. I do not mean to say that one's financial status is used as a lever to drive a "hard bargain." I think the time has passed when any company would condone the exploitation of a claimant because of his poverty because it is a short sighted approach to good public relations. I will say that it helps to make a reasonable settlement possible without extended negotiation and the attendant expense.

Conclude settlement or procrastinate: Most cases have some value and it behooves the adjuster to properly evaluate the case if he can, but some claimants through ignorance cannot properly evaluate their claim and it becomes necessary for the adjuster to so advise them that the company cannot recognize his claim or accede to his demands. It is at this point that an adjuster must call upon all his resources because when direct negotiations with the claimant are terminated, he must assume that the claimant will seek legal advice and consequently must be prepared to make his best offer. It is at this point that all concerned are going to profit if a settlement can be made and for an adjuster to turn down a claim for a few dollars that ultimately costs many times that, is foolhardy. If a settlement cannot be made, then an able adjuster will always "leave the door open" in an effort to maintain friendly relations and not create a situation where, if it is advisable, that a settlement cannot be made with claimant's attorney because the

claimant is mad. "Mad law suits" have cost the companies many times more than they should have. For that reason, while an adjuster should always maintain respect, he can have no pride.

COUNSEL

Experience of Counsel: After the claimant has obtained counsel and has been put on notice, then, of course, all negotiations are with counsel and you may be sure that the experience of counsel has much to do with whether or not negotiations are entered into. If upon reflection and re-submission to the adjuster's superiors it is concluded that further negotiations should be conducted, it is best to open up negotiations immediately after counsel has been retained. Counsel will consider the value of his time in negotiating settlement and every possibility of settlement should be explored at this point, because if the case is not settled and counsel goes to the time and trouble of preparing a law suit it will be most difficult to settle at a later date if the adjuster has made a wrong evaluaion at the time the case is first referred to counsel.

Condition of Court Docket: If the Court Docket is crowded and the case will not be reached for trial for some time, this will give the adjuster more time to negotiate and ultimately conclude the case without the necessity of referring the case to defense counsel.

Timing: We in the adjusting business used to consider Christmas a very advantageous time to dispose of cases with claimants and their attorneys, but of recent years, we have found the 15th of March as good a time to dispose of claims with attorneys. Other things enter into timing, also, I recollect an attorney in my experience who was always most difficult to settle with and was prone to try his cases rather than settle them. It developed that all of a sudden he became most reasonable and we were successful in disposing of quite a few cases with him. We could not understand his change in tactics until we discovered that a member of his family had been involved in a serious accident and that he was obligated for large and protracted medical expenses.

Cost of defense: This item is ever present in an adjuster's life and is subconsciously considered from the earliest phase of a case, but when a claimant hires an attorney he is faced with the reality of having to retain counsel and subject his company to the inordinate expense of defending a case.

Odds for and against successful defense: The odds for and against the successful defense of a case are also subconsiously in the mind of an adjuster at all times. As a rule of thumb, adjusters like to evaluate a case by computing the odds on the basis that if there is a 50-50 question of liability, it is worth 50% of the value they have placed on it and if counsel advises them there is a 50-50 question on the law, that reduces it to a fourth and if it is a case that defense counsel advises

that it is a 50-50 case to a jury it is further reduced to one-eighth of the estimated full value.

SUIT FILED

Submit to trial counsel: After all efforts to settle a case have failed or if the demands are beyond the evaluation of the case and suit is filed, many companies prefer that negotiations, if any, be conducted by trial counsel and the case is submitted to trial counsel. I prefer, however, to have the adjuster work closely with trial counsel and if he recommends further negotiations to continue to conduct them through the adjuster. In my opinion a case is seldom, if ever, settled at this point because the company and the adjuster have considered what they deem to be the full value of the case before letting the case go to suit and unless trial counsel can point out some glaring oversight upon the adjuster's part, there is little to be accomplished in making an effort to settle at this time. Many times, however, a suit is filed by counsel with the express desire of continuing negotiations, to keep his client in line or to get the case on the docket when it will be some time before it will be reached for trial. Usually in a case of this kind, counsel will stipulate to the extension of time to answer in order to exhaust all avenues of settlement before seriously considering preparation for trial.

Jurisdiction: This is an important element in the consideration of any law suit because some courts are considered more liberal or conservative than others and the same thing is true with juries.

Current trends of litigation: The companies are very sensitive to the current trends of litigation and rely upon the adjuster and trial counsel to advise them of what the juries are doing at that particular time. Our political system is a system of checks and balances and we seem to sense that the jury systems operate in somewhat the same way. Whether it is real or fancied, I cannot say, but it does appear that juries do follow a trend.

Ultimate cost: Before going to trial, the adjuster and defense counsel usually sit down and go over a case and try to re-evaluate it on the premise that a trial is imminent and what can be expected in light of the current trend of the verdicts that are being rendered in the praticular jurisdiction in which the case will be tried.

TRIAL

Appraisal of jury: It has been my observation that more cases are settled when a jury is picked than should be because when a case has gone that far the expenses has been incurred, the odds have been weighed and "the die has been cast," so to speak. Nevertheless, some plaintiff's counsel more so than defense counsel are inclined to settle cases after a jury has been picked for various reasons, I presume. I

would suspect that they do not like the looks of the jury or for the first time they stop to consider that there are two sides to every law suit. I have heard plaintiff's counsel say that the defense will always pay as much as they have offered at any time before a jury returns a verdict, but I question the dialectics and have seen such an assumption prove costly to the plaintiff. In my opinion, unless there are unforeseen contingencies a case is worth more by way of settlement before a jury is picked than after the trial has commenced. Most courts are crowded and if further burdening of the docket can be avoided by a compromise of the differences between the parties, it should be done without taking up the time of the courts and with a saving to the taxpayers.

Proof: Sometimes, in spite of the preparation, the proof that is anticipated is not forthcoming by reason of the witnesses failing to testify to their previous statements. There is something about taking an oath that has its effect upon some witnesses and when this happens, the party who was so unfortunate as to rely upon their testimony is placed in an embarrassing position which enhances the value or reduces the value of a case depending on the side that it affects. When this occurs, a case can usually be settled without submitting it to a jury because today most juries are intelligent enough to weigh the evidence and there is usually a slight penalty attached to the side who does not measure up to their claims.

It has been a privilege to speak to so many fellow lawyers and if one of you has obtained anything from what I have said, I feel that I have been more than rewarded for this rather feeble effort.

TRENDS WHICH MAY INFLUENCE THE FUTURE AND NATURE OF AUTOMOBILE LIABILITY LITIGATION

By

W. J. Hynes

I am happy to appear in Omaha. This town has many pleasant memories for me. When I was a kid, my people were in the coal busi- in southern Iowa. My folks put thousands of tons of old Smoky Hollow coal in South Omaha stockyards and along the Burlington Lines in your state. My first job was traveling in Nebraska along the Burlington, talking Iowa coal to dealers. I watched your football team at Lincoln win many games and lose a few. Many close lawyers and doctor friends of mine have graduated from Creighton and Nebraska.

Your chairman assigned me the subject, "Trends Which May Influence the Future and Nature of Automobile Liability Litigation." I don't know why you want to hear about such trends here in Nebraska unless you want to worry along with the casualty industry on some of its problems. You here in Nebraska are one of the pillars of the great

middle west where excessive verdicts are the exception to what some call a general rule. Out here you have faith in yourselves and boundless faith in the future. Early in life you learned the lesson to store away enough food from the garden to stretch over the long winter, and that any fellow too lazy to shovel a path to his dog house would end up broke.

A few seconds ago I mentioned the subject of coal. In my lifetime we have seen the market disappear for this product in many industries. Why? Because the coal industry did not grow with the times!

Along with the football coaches, you can find some long faces in the casualty insurance industry. Some are using a language foreign to Nebraska ears—of alarm, of inaction, of timidity. If you read press releases quoting the coach during the week, you find yourself puzzled and confused when it comes to laying a two-bit bet on next Saturday's game.

If you pick a fellow and ask him a question, and if he says, "No comment!" he's a big-shot. If he says, "I refuse to answer!", he's a questionable-shot, and if he says, "I don't know!", he's an ordinary confused citizen. So, from a confused citizen's viewpoint, I will tell you what some people are predicting:

1. We will price ourselves out of the market.
2. The juries want to pay the injured party regardless of blame.
3. We will end up with a plan similar to Workmen's Compensation.

No man can predict the future, but people who see always look ahead. The industry will be better off, and so will the legal profession if we spend our time and our energies correcting any evils in our own house and in that way make the future.

It is not healthy for the industry to go around with long faces predicting that this and that is going to happen. This is not the time for loose talk nor the time to get the jitters nor the time to live in a world of gloom nor the time to sit and wring our hands.

For twenty years we have lived under constant crisis and emergency and have been on what some refer to as an "economic bender." We have consumed two wars, inflation, hand-outs, deficit spending, and high taxes. Is it any wonder we have a hangover? Is it any wonder if some of it has reached into the casualty industry?

If members of the industry keep predicting long enough and loud enough, then some of these things may happen.

We must be humble enough to admit that the casualty industry does have some problems and troubles. Some of us are dragging our feet; some of us are attempting to find an easy way out of these troubles. There are no short-cuts. The pasture always looks greener on the other side of the fence. I know of no plan from any foreign spot that looks better than the American plan. These problems are not stuffy, even if some of the characters trying to solve them may be stuffed shirts.

Here in Nebraska you are still standing on both feet. You know that God will provide if you get out and scratch. You learned a long time ago that the outside of a horse is good for the inside of a boy.

Your fathers and mothers were men and women of great faith. Your state was built by men and women of great courage and daring who had confidence in themselves and were willing to risk their lives for what they wanted. This state, this country was not built by men of little faith nor by those that were over-cautious and afraid. It was built by men who bounced off the canvass many times but always had the "guts" to come back.

There are times when we have to operate without a circus net under us. There is no substitute for backbone whether you are in the law business, the cattle business, or the casualty insurance business. You can't be the boss of a hamburger stand without some headaches. All of the Vishinskys in the world could not have sent your grandparents to the cellar.

Too many bosses have forgotten the lessons they picked up on the court house square. All some of these problems require is some one to sit down and think them out. I have a friend who has the habit of saying, "Have you lived long enough to know what it's all about?" Recently, he told me that he called a friend of his who was sick at home and who had a telephone at the bedside. He asked that question of his friend. The friend replied:

> "Yes, I have! If I had my life to live over again, I would have spent more time on the courthouse square, got myself a good sharp knife and a soft piece of wood and whittled a lot more than I did and thought things out!"

Some of us are more alarmist in one way or another than others. Recently a friend of mine got a sudden grip around his heart. It scared the tar out of him. He went to his family doctor. The doctor checked him, and finally the doctor said:

"How do you sleep, laying on your arms with the arms extended up under the pillow with your head on top of them?"

My friend said,

"Yes, that's the way I sleep!"

The doctor then said, "That's what's wrong. You've pulled a muscle, So from now on you sleep with your arms down beside your body, and you won't be bothered with this catch around your heart."

The industry has some aches and pains and a few pulled muscles, but nothing that can't be corrected with common horse sense, plenty of exercise of the brain that God gave us and hard work.

Boiled down to simple language, I would like to mention a few trends that are in the air:

1. There are too many severe accidents that cost too much.
2. The public is yelling on the cost of automobile insurance.

3. What is the industry going to do with the fellow who has no insurance and doesn't give a damn whether he has or not.
4. What is the legal profession going to do about the delays in getting cases up for trial? In some jurisdictions, in particular the metropolitan areas, it takes all the way from two to three to four years to get into court. Professor Fred Lewis of Drake University recommends that the insurance carriers extend medical pay coverage to include a disability coverage and have a set schedule of fees for injuries in the assured car. Under his plan the insurance carrier would be subrogated to the assured and passengers rights against the third party and would carry the ball in litigation and make a refund to the assured and his passengers of any recovery above the amount of money paid out. This plan would also make the insurance carrier assume the burden of delay.
5. An agent in a near-by state has suggested that a standard policy with a $500 deductible clause on property damage as well as public liability. He has a theory that this will cut down accidents if the assured knows he has to stand the first $500 in any accident, whether it be personal injuries or property damage.
6. There has been a constant effort in the last year or two to tinker with negligence laws in a lot of states. Some of the these suggestions have come from NACCA attorneys.
7. Another group talks arbitration when all you have in dispute is a question of fact. Insurance companies have been arbitrating cases among themselves for some time. We have arbitrated coverage questions with other carriers. I am told Ringling Brothers arbitrated all the cases in the Connecticut Fire in 1944, and everything was cleaned up in one year.

The other day I read of a gathering of 700 farmers with 700 different farm plans. I could spend the afternoon relating different plans suggested in recent years in the casualty field. So you can see that Ezra Benson is not the only one who has his problems!

LET'S LOOK AT TREND NO. 1

Namely, that there are too many severe accidents, and they cost too much.

More than one and a quarter million people were injured and more than thirty-eight thousand killed in automobile accidents in 1952. In a few territories juries have continued to be wild in their evaluation of injuries. This, of course, influences the thinking of claim men on values, especially in those few territories.

Maybe it's my white hair talking, but in my book something has been happening to people the last twenty years. They demand as today's necessities yesterdays luxuries. Some have thrown away the rule

book on morals. Shall we blame it all on this economic binge? Some have thrown common horse sense to the wind. Some would starve to death in a butcher shop. Some do not think. At home, recently, I was cleaning out a drawer where I keep my shirts, and I discovered two old broken-down shirts, worn beyond repair. I have found from experience that the best way to get rid of them is to tear off the collar and cuffs and throw them in a pile for dust rags. I did just that, and through some unaccountable reason these two old shirts without collar or cuffs landed in a hamper and went to the laundry on the customary day. When my shirts came back, low and behold these two old shirts without collar and cuffs had been washed, starched, ironed, and had a pretty ribbon around them at a cost of 27 cents each. Somebody in the laundry was not thinking or didn't give a damn.

When I started to prepare this paper, Arthur Godfrey and some young kid whom he fired from his television program were more important than the United Nations. At least they were getting more press notices. The press told us this kid had a larger TV audience than MacArthur after Truman fired him.

Hedda Hopper made the prize philosophical remark when two alleged movie stars recently were married, each for the fourth time.

> "All I have to say, and I hope these will be the last words on the subject, 'They deserve each other.'"

We must be realists. With all the different types of people in this world the only way we can meet this trend is to cut down the number of accidents. The $64 Question is, HOW?

TREND NO. 2

The public is yelling on the cost of automobile insurance.

Higher verdicts and settlements have to come from premiums. Premiums are regulated by rates. Rates are regulated by state commissions, and state commissions are regulated by public opinion. Public opinion will not stand still for continued increasing of rates. The public has some influence with politicians. In the long run the desires of the public will rule.

In most territories there is criticism directed at the casualty industry based almost exclusively on cost despite the fact that the increase, if any, over prewar premium is very small in comparison to other commodities. But somehow or other the public cannot grasp the fact that when motor vehicles cost almost twice as much as before the war, when repair costs and labor costs have doubled, and when the average cost of each claim has increased materially, and the accident frequency has increased along the same lines, these factors are bound to be reflected in premium costs. Still the public is unable to understand, mainly because these facts have not been explained to them by the industry.

TREND NO. 3

What are we going to do with the fellow who has no insurance and doesn't give a damn whether he has or not?

Different plans have come up in recent years in this regard:

1. The Canadian unsatisfied judgment fund or the Manitoba plan in particular. It has been in existence about eight or nine years. This fund affords a 5/10 coverage. The license of the driver is suspended until he reimburses the fund in full plus interest and he must also establish financial responsibility before he can get his license back. The fund is built up by collecting a dollar from each registered owner of a motor vehicle at the time he gets his license. In order to file a legitimate claim against the fund, the claimant has to prove he has a judgment and can't collect it. This now applies to hit-and-run drivers as well. In Alberta, Newfoundland, Nova Scotia they have similar plans.
2. The British Columbia plan is financed by the insurance carriers doing business in that province. There is no levy against any registered driver. One hundred and thirty-three insurance carriers guarantee the fund to the Attorney General. There is an unsatisfied judgment committee that acts as the court made up of insurance company representatives. A claim must be filed with the committee after they have secured judgment. The cost of this plan during its four or five years operation averages around $20,000 a year. For your guidance there were less than 300,000 registered vehicles in British Columbia.

   From a practical operation, I'm told, in British Columbia the committee draw a draft against any bank, and they guarantee that overdraft with the bank.
3. The North Dakota unsatisfied judgment fund followed one of the Canadian plans. They started it back in '47; they collected a dollar from each registered motor vehicle owner. No fee was collected in '49, '50, '51, or '52, and I understand they are collecting one in '53 since the fund was exhausted. This North Dakota Law includes the hit-and-run judgment also in excess of $300. Any district judge can issue an order against the fund. The Attorney General administers the plan without any special fund set aside for the administration.
4. New Jersey has adopted an unsatisfied judgment plan collecting a dollar from each registered owner who shows that he has insurance and $3 from the fellow who doesn't have insurance. There is a strong argument against this plan, that the uninsured should be the man to pay the fee and not anyone who carries insurance.
5. We might mention that Massachusetts has had the compulsory

insurance plan for many years. No other state has followed their plan.

6. The so called Saskatchewan plan is state insurance in my book. Recently a British postal clerk said, "It is no use thinking everything in the garden is perfect, once the state takes over; that just isn't so." and a British miner said, "A boss is a boss no matter whether he gets the job from the state or private owners. Sometimes the bosses of private industry are more reasonable to deal with."

   The Saskatechewan Plan offers minimum rights and minimum small benefits. The premium is collected when you register and get your license. This province of course is agricultural and has no large cities, and about half of their roads are closed during the winter. Many motorists in this province carry their own insurance. If they do, this insurance has to be exhausted before anyone can collect from the fund. The plan gives $20 a week as the maximum on disability for a little over two years. Three thousand dollars is the top on a fatal case to the primary dependant and $625 for the secondary dependant. A housewife is worth $1,000, and unless it was changed during the current year a child of six is worth 100, that is a fatal, a child of seven $200, and it keeps increasing $100 up until 15 to 17 when children are worth, $1,000. If an unmarried person over 18 is killed, $100 is paid to the parents. In all fatal cases $125 is allowed for funeral expenses. If you lose both hands, you get $2,000; if you lose both feet you get $2,000.

Some companies are now playing with the idea of giving protection to any assured and the passengers in his car in the event the party causing the damage does not have any insurance.

TREND NO. 4

The complaint on long delays in getting to trial.

The legal profession has been fussing with this problem for years. It is improving in some territories and going backwards in other territories. It is strictly a problem which should be solved and will be solved by the legal profession.

TREND NO. 5

Some argue that there is merit to the agent's plan of a $500 deductible clause on the public liability and property damage on the theory that some people drive a car so carelessly because they have insurance.

TREND NO. 6

Playing or tinkering with the rules of negligence.

Many such plans have come up over the country. One fellow advocates paying regardless of who is at fault. Juries in some parts of the

country seem to have adopted that rule. Directed verdicts are few and far betwen.

Mr. Marx down in Cincinnatti advocates, "Let's compensate and not litigate." He argues that the damage suit is outdated, that the courts are bursting with personal injury cases in larger metropolitan towns, and because of this a delay of two to three years is normal procedure. Mr. Marx is recommending a compensation plan where we have a fixed schedule in payments made without regard to fault.

The casualty industry has always been opposed to the Workmen's compensation plan as applied to automobile law. It has always opposed compulsory insurance as not answering the problem. Instead, it has advocated the financial responsibility acts.

What are we going to do to meet some of these trends and problems in the casualty industry and in the legal profession? I think we should admit that we don't have all the wisdom and virtue in either group.

Years ago Irvin Cobb was one of my favorite writers. You will recall he had a character in his books down Kentucky way by the name of Judge Priest. Not long ago I picked up one of Cobbs' books and read the opening paragraph describing the judge's chambers and the courtroom. The cracked ceiling and the dirty walls, the law books on the shelves, the two windows facing the courthouse square, the courtroom, the lack of heat on cold days and the suffocating air on warm days, the lack of ventilation. The description written forty-five years ago on the courtroom down in Kentucky fits about seven out of ten of the courtrooms of today.

Is it any wonder that sometimes the juror is puzzled when he is called for jury duty. Let's take a look at today's juror. He gets up in the morning. He is not a bookish man. He does not like legal words, He likes plain English. He may be young, old, unemployed, employed. Some know the responsibility of money. Some don't. He may or may not put his coffee on in an electric percolator. He may or may not cook his toast in an electric toaster. He may or may not grill his bacon and eggs on an electric grill. He goes out to his double garage and gets into his $2,250 automobile. His mind may wander to a radio, a TV program or a 3D movie he saw last evening. He knows he can do a lot of things in that car. He can get a meal, watch a movie, cash a check, return a library book and in some parts of the country go to church or buy groceries. He drives to the courthouse on pavement and through electric stopsigns. This is a speed age. If this fellow is a rancher or wheat farmer, he may go to Mexico City for a holiday, or he may study the air maps for a two weeks trip around the world for $1500. When he gets to the courthouse, what does he find? Some people say he drops back forty or fifty years as he goes in the door in environment, speed

and procedure. Some say it is time to air out the left-over odors, in this place of dignity detached from the community.

It is said that Sir Thomas Beecham, the conductor and founder of the Royal Philharmonic Orchestra in London, was out for a stroll one day, and his top coat got heavy, so he stopped a cab and put his coat in the cab and continued on with his walk telling the cab driver to follow him. I tell this little story to illustrate the point that we may be carrying extra clothes or wraps that are too heavy. Maybe we should call a taxicab and remove some of the weight and let the cab follow us.

I have faith in the American Public. The casualty industry should carry its story to the American Public and tell the press and public all they want to know. Too often in the past, management has told the public nothing. They have published a brief annual report. As a result John Q. Public has done a lot of blind flying. Salesmen tell us people are now in the "Selection Mood." Let's answer the questions and explain policies. If we want the public to worry about us, we've got to worry about them. How? By getting behind the footlights and telling our story! The public is eager to know about the industry and its operations. The life of the industry depends upon its acceptance by the public. A person doesn't necessarily like you when he says, "Good Morning."

Some of the trends will correct themselves when properly presented to the public. Recently, I read a report made by a psychiatrist in Detroit who was in charge of a clinic maintained there by the courts.

> He said, of the 10,000 problem drivers referred to the clinics by the courts one hundred of these were found to be ready for the insane asylum; 850 were feeble minded, and 1,000 of them were former inmates of a mental hospital. This psychiatrist reported that, "Many other offensive motorists who would be described by a truck driver as nuts were classified in three categories:
>
> 1. The psychoneurotic, an emotional unstable.
> 2. The impulsive and irresponsible.
> 3. The day-dreamer, preoccupied by thoughts of financial distress, marital discord or sex problems.
>
> The doctor said that there were many mental, intellectual and emotional misfits driving cars on streets and highways. Groucho Marx puts it in the language of the street by saying there are a million screwballs on the highways.

A specialist out in Pasedena is recommending that we start studying the cause of injuries in automobile accidents.

> He reports that sixty per cent of the injuries in automobile accidents are due to people being thrown against the inside of the car and that thirty per cent are due to people being thrown out of the car, and only ten or twenty per cent are caused by the actual crashing of the two cars. He recommends a safety belt and that the automobile manufacturers

make a study on how to make the seats more secure and also cover the dashboard.

Therefore I suggest today:

1. We have brought some of the problems on ourselves. Not all the square-heads and chiselers are on the other side of the table.
2. The legal profession must solve some of its problems, and we see no harm in raising the windows of the courtroom and letting in some fresh air and sunshine and moving along with this jet age.
3. Prepare your cases. One of the chief troubles of the industry in recent years has been brought on by the tremendous increase in volume and the great increase in severe accidents. Many defense men in large metropolitan cities, when they go to their office at 9:00 in the morning, don't know what court they are going to be in; it might be one of six. This particular defense man has to rely on younger personnel to keep the files up and be prepared. If the personnel is experienced and well-paid, then the cases are well-prepared. If he is underpaid and inexperienced, then the cases are accordingly unprepared.
4. Defense attorneys should associate themselves into individual groups by state and hold schools or clinics or seminars of instruction. At these seminars or clinics, leading plaintiff and defense men and doctors should appear. We don't mean one-day schools; we mean four or five-day schools. We don't mean once a year; we mean quarterly!
5. Some smart fellow has figured out that a natural athlete responds intuitively to a situation in a tenth of a second while it takes a synthetic athlete four seconds, just long enough to get knocked down. The same rule might apply to attorneys. When the natural fellow gets his nose broken, he wonders if he can stay in the game; the synthetic fellow wonders if it will spoil his date.
6. We think the industry and defense attorneys should adopt a more militant attitude so far as state legislatures go on further turning left on legislative problems.
7. Some of us have got to get in step with the times. Back in my army service I had a tough old major in training school who always picked on me and had this wise crack, "Hynes, everybody is out of step but you." So it is in the industry, a lot of fellows are out of step. Some cheap, chiseling small-thinkers have to get in step. Just as it is discouraging trying to be a good neighbor in a bad neighborhood; it is discouraging sometimes to a company man to have bad neighbors in the same industry.
8. We should not handcuff younger members when they attempt to develop a new idea with handicaps of general policy, habits, traditions or artificial must.

9. We recommend for reading a paper by Welcome D. Piersons of Oklahoma City entitled "Instructions and Arguments to The Jury From A Defense Point of View." This paper was given in the October issue of *American Bar Journal.* He tells you how to meet the blackboard and general economic issues.
10. Many defense men are not on top of their files. For example we have a law suit file a year old. Our attorney the latter part of October wrote our branch office "in checking through our file the only medical report we find was in February of this year. There is a possibility of this case being reached the week of November 2nd. You may say where was the branch examiner during all this time? Where was the Home Office examiner? We also have volume problems in the branch as well as the Home Office.
11. When you get a case referred to you why not review it in detail, request the carrier for additional information. Express yourself whether it is one for settlement or trial. Follow this with regular status reports. Answer the carriers letters.
12. Win, loose or draw talk to the jury after the case is over. Tell the company the reasons behind the verdict. The company may be able to use the information the next day in another case.

In meeting some of the problems and trends that appear on the scene we in industry will have to walk up to the end of the cannon and look down the cannon and not be afraid. There are some signs in the air, make no mistake of that. We should trim our sails to meet the storm.

In my book it looks to me like the casualty industry has a direct obligation to carry this story to the public and tell their story in all crossroad spots in every state in the union.

Out on the west coast where they love razzle-dazzle, whether it be in sports, movies or the court room, the industry has been carrying their story to the public with success for two years.

The industry will have to sell accident-prevention work to the public. In the last analysis, if accidents were cut down twenty per cent, many of the problems would no longer exist. I told the NACCA boys in Chicago in September that they should get behind accident-prevention work in the automobile field and lend their general know-how to the campaign towards cutting down automobile accidents. I say the same to you today. Don't you think the public should get its road information from those that have traveled the route before? We should know all the stops like the horse on the old milk wagon.

We should tell our story over and over and over. The church bells in your town don't ring just now and then. In some towns they ring every day, to remind us of the greatest story ever told. We should insist that every high school have a drivers training course and that every

community have a refresher course for all types of drivers. We should attempt to sell the public not to resign itself to today's preventable plague of highway accidents. We might compare today's ignorance with the blind ignorance of our grandparents and great-grandparents in accepting smallpox and other killing diseases as inevitable in the days before research and germ killers. Traffic laws should be enforced. More jail sentences should be handed out to reckless drivers. Motor vehicles should really be inspected. When a license is issued to a driver, the public should know his physical condition and his ability to drive. Any person who drives a car with liquor inside of him should be penalized by jail sentence and have his car impounded.

The industry is weak on public relations and must tell its story. No one has a lease on public opinion. Lets carry the story to the American laboring man, to the farmer, to the small town businessman, to the large town businessman, to the American housewife, to the great American public. All these people are fairminded. All are hungry for the facts. All want you to get a fair shake whether you be the plaintiff or the defendant.

I'm sure you read recently about the little old lady from Philadelphia who waited 40 years to be recognized as the author of the famous child book, "The Little Engine." You recall the words, "I think I can, I think I can, I think I can," and then after the engine got over the mountain with the load of Christmas toys, the engine puffed happily, "I thought I could, I thought I could, I thught I could."

I'm sure that many of the problems that we are faced with in the casualty industry today can be solved if those in the industry and legal profession say to themselves, " I think I can, I think I can, I think I can." And some of us may not get over the hill with the load, then the younger fellows as they follow going down the other side of the hill can say to themselves, "I thought I could, I thought I could, I thought I could."

MUNICIPAL LAW SECTION

John Keriakedes

Chairman

"REVISION OF MUNICIPAL ORDINANCES".....W. W. NUERNBERGER, ESQ.
Lincoln, Nebraska
Member of Lincoln Bar

"EVERY DAY PROBLEMS OF CITY ATTORNEYS".....JACK M. PACE, ESQ.
Lincoln, Nebraska
Deputy City Attorney of Lincoln

REVISION OF MUNICIPAL ORDINANCES

By

W. W. Nuernberger

Before preparing a speech on the Revision of Municipal Ordinances, I asked an older member of the Bar what procedure should be used in making such a speech before a meeting of the Nebraska State Bar Association. This lawyer had had considerable experience and had previously appeared at meetings of the Nebraska State Bar Association, and he gave me the following advice:

He said to prepare the speech in proper form, typewritten, and to turn this speech over to the Secretary of the Association in order that it could be published in the Nebraska Law Review; then when called upon by the Chairman to speak upon the topic assigned, to announce that all members would receive a copy of the Nebraska Law Review and therefore there would no need to bore them with a speech this afternoon.

I am not going to take that advice; I feel an obligation, as well as a desire, to give a speech before a group of lawyers who, perhaps, will listen to me. I cannot say that lawyers always listen to me when trying a case or when trying to compromise a case with them and therefore this is a unique opportunity.

It is indeed an honor to be on the program of the fifty-fourth annual meeting of the Nebraska Bar Association, representing the Junior Bar Group on that program. As a member of the Junior Bar, my discussion with you this afternoon cannot be based upon years of experience as most of the speeches you will hear at this meeting will be. I hope to exchange some ideas with you on ordinance revision, particularly in the field representing villages, towns, and cities in the population group between 500 and 5,000.

Most of the work that has been done and articles that have been written on ordinance revision and codification relate to large cities, at least the size of Omaha or Lincoln. I submit that that is not where the greatest need or problem lies. These large cities have more complicated codes and, as a result, their revisions will necessarily be more complicated; however, they are not in need of assistance, nor do they need to be urged to get their codes in shape, for two reasons:

First, the cities of both Lincoln and Omaha have full-time legal staffs. These staffs realize the need of having a complete and up-to-date code and they therefore undertake to keep their codes current.

Second, the need for an up-to-date code is more apparent in a large city, with the result that finances are easier to obtain for the purpose of revising a code, or making amendments to the existing code.

A working code in a large city is an absolute necessity, just as is a police department or a street department. A working code in a small community is not an absolute necessity for, although the smaller city may be handicapped in performing its functions because of the lack of a modern code, somehow these smaller cities can manage to get along with the old code, and whenever a new situation arises there is usually sufficient time in which to pass a new ordinance to take care of the situation. However, this is not the efficient way to run a city, nor is it the practical way to run a city. The best way for our towns and cities to cope with present-day problems is to have a modern code which is kept up to date. As the city becomes older and records accummulate, the new city attorneys and city officials find it more and more difficult to determine what the law is and what functions they are required to perform.

Most of the small cities, at least in the State of Nebraska, have a city attorney, but the salary for this position is nominal, with the result that all city attorneys are poorly paid for the amount of work they must do for the city. The work that is done is done mostly because of a community spirit or community pride, but there is a limit to the amount of work that can be done for such reward. The city attorneys of the small towns and villages must make a living and, in order to do this, they must spend the majority of their time in their private practices. The point I am trying to make is that these city attorneys cannot be expected to undertake the job of an ordinance revision without receiving some additional remuneration for the work, and they cannot receive anything above their fixed salaries, by virtue of Section 17-611, 1943 Revised Statutes which provides: "No officer shall receive any pay or perquisites from the city other than his salary." The result is that the person in the city who is the most competent and who is the most interested in having a modern code cannot undertake an ordinance revision.

The Supreme Court of Nebraska, in the case of Neisius v. Henry 142 Neb. 29, 5 N.W.2d 291, has set forth the meaning of the above-noted sentence from our statutes. In the Syllabus of this case the court held as follows:

> "(5) A public officer is required to perform the duties of the office, however burdensome they may be, for the compensation fixed by law. (6) And if he performs new or additional duties which are germane to his office, whether prescribed by law or otherwise it must be conclusively presumed that they were performed for the salary fixed by law, or that they were gratuitous. (7) The duties of a public officer cannot be divided into two separate jobs and additional salary be paid him in excess of that prescribed by statute as a consideration for his filling the new position thus created. (8) Upon principles of reason, morality and public policy, irrespective of applicable statutes, one who is entrusted with the business of others cannot be allowed to make such business an object of pecuniary

benefit to himself. (9) When additional pay or perquisites are accepted by a public officer for the performance of duties germane to his office, a taxpayer may sue to compel their return to the public treasury. (10) Under such circumstances, the fact that the value of the services rendered exceeds the amount received is not material. A recovery quantum meruit cannot be had."

One need only look at the codes of various cities and villages in Nebraska to see that the above requirements means that codes will not be revised or kept up to date. Take your own city for example. Chances are that the code was last revised in the "Twenties" and that there have been no amendments or supplements to this code since that time. The answer to the problem seems to be that this work will have to be given to another lawyer in the city and that the City Attorney is the one who will have to urge this contract with the city.

It is my opinion that the job of revising the code for a city in the population group between 500 and 5,000 is not a job for an expert; or, to put it another way, every attorney or lawyer is sufficiently competent to do the work. As a practical matter of getting the work done, many cities have found it advisable to turn the code over to someone who has done revisions before. The work is the same as any other legal work found in the law office. When first presented with a problem the lawyer might find it difficult, and it may take a considerable amount of time to find the correct answer, but subsequent problems of the same nature will be much easier and will not take near the time as the original problem. The same is true of ordinance revision; once a revision has been made, subsequent revisions do not require as much work; but all revisions require a considerable amount of time and the work is tedious as compared with other legal matters. As a result it is very difficult to obtain a sufficiently large appropriation from the city to justify an attorney's dropping other legal matters in order to take on a revision.

There appear to be three reasons why the codes of our smaller towns and villages have not been revised and kept up to date:

1. The city attorney does not receive a sufficiently large salary to undertake a complete revision.

2. The city does not feel justified in spending sufficient funds for a complete revision as often as one should be made, and

3. The cities do not have a system for keeping a code revision up to date.

The answers to these problems would seem to be as follows:

1. The city attorney should not be expected to undertake a revision, but the work should be turned over to another attorney.

2. City officials should be educated as to the value of a modern, up-to-date code, and

3. The city should adopt a code revision which can be revised as new amendments to the code are made. The answer to this is the loose-leaf system, with which all of you are familiar.

Hastings, Nebraska, very recently revised its code, using a loose-leaf system, and if any cities are contemplating a revision in the near future I would recommend that they examine the Hastings code which is designed for annual amendments in order to keep it up to date. I have a copy of this code with me today, and it will be passed around the room for your inspection, as an example of what can be done with the loose-leaf system in municipal code revision.

The Hastings Code is one of the more expensive loose-leaf systems inasmuch as the binding is one of the best and the paper is more expensive than the common three-ring notebook paper. Smaller cities will perhaps find it advisable to use the standard three-ring notebook paper with a cheap paper cover, much the same as the Lincoln Ordinances, a copy of which will also be passed around the room. The latter type of code is much cheaper and can probably even meet competition with the old pamphlet form used by most cities in the past.

The original code should probably be printed in order that there will be no question that the publication required by Section 16-247 and Setion 17-613 has been made. Additional amendments, which will run between two to five permanent ordinances every year can either be typed, mimeographed, or printed, in order to keep these codes up to date.

Although the cities cannot expect the city attorney to undertake a major revision, the city can expect, and should require, that the city attorney properly edit the new ordinances for entry in the code. These ordinances, properly edited, should then be turned over to the city clerk, whose duty it should be to have the same printed or mimeographed for distribution to holders of the code. In small towns it would not be necessary to have more than ten copies of the code kept current, and if individuals desire to keep their codes current they can pay for this service the same as is done in Lincoln.

In case any of you are fired with ambition and wish to go back home and start a revision, here are a few of the steps which our office takes in making the code revision:

If there has been a previous revision of the code, it is advisable to obtain three copies of this code. Two of these copies will be cut up and pasted in a three-ring loose-leaf notebook and the third copy will be kept as a check on the revision to be sure that nothing is omitted from the code.

After the old code has been properly pasted in the loose-leaf binder, the attorney should obtain the ordinance record of the city to check all the permanent ordinances which have been passed since the date of the last revision. If there are extra copies of these ordinances avail-

able, the attorney can save typing by using them but if extra copies are not available, all of these ordinances should be copied and pasted on the loose-leaf paper.

Each new ordinance should then be checked against the old code to see if any parts of the old code have been amended or repealed. The new ordinances should be placed in their proper position in the old code and any repealed sections should be moved to the back of the code book.

A most important part of the ordinance revision is to obtain a functional integration and to arrange the code on a topical basis. This requires setting forth the main divisions of the code and arranging the various ordinances under these main headings. In the Hastings code, fourteen divisions were used, which were as follows:

> (1) Additions: Corporate Limits. (2) Animals and Fowls. (3) Automobiles, Vehicles, Bicycles, Public Cars, Traffic regulations. (4) Building Regulations. (5) Business Regulations. (6) Civil Administration. (7) Fire Protection: Fire Hazards. (8) Health and Sanitation, (9) Library and Museum. (10) Parks. (11) Penal Code. (12) Public Utilities. (13) Streets, Alleys and Sidewalks. (14) Taxation.

Each division of the code is called a Chapter and the ordinances are grouped under the chapters, each as an article of that particular chapter. The subdivisions of each ordinance remain the same, becoming sections of the code. Citations to the code can then be made by Chapter, Article, and Section number and any new amendments can be added as an article, a section, or even a new chapter.

The job of resolving conflicting language and eliminating obsolete ordinances can only be done by a very careful reading of the whole code. While reading the code the lawyer should make notes on new legislation that may be required in order to have a modern code and, if it has been a number of years since the last revision, he will probably find that there are no adequate provisions for regulation of traffic, building, zoning, and many other functions of the city. The question arises of whether it is necessary, when adding new legislation to an ordinance, to actually pass the ordinance in the usual manner before including the same in the new code. The case of Village of Deshler v. Southern Nebraska Power Company, 133 Neb. 778, 277 N.W. 77, involved a case where the village included an ordinance in the revision which had not been previously passed by the Village Board. The Court held in that case as follows:

> "The governing statute is: 'Ordinances shall contain no subject which shall not be clearly expressed in its (their) titles, and no ordinance or section thereof shall be revised or amended unless the new ordinance contain the entire ordinance or section as revised or amended, and the ordinance or section so amended shall be repealed.' Comp. St. 1929, Sec. 17-520. It seems clear to us that the title to an ordinance revising, classi-

> fying and indexing the ordinances of a village in force and effect on the date of its passage is not broad enough to include a new ordinance purporting to grant a 25-year franchise to a private company. The inclusion of Chapter 35, the franchise ordinance, in ordinance No. 49, is violative of the mandatory provisions of Section 17-520, Comp. St. 1929, and therefore of no force and effect."

Because of the particular facts of that case, the city was estopped to deny the validity of the ordinance and, in effect, the court reached the same result as if they had declared the revised ordinance valid. Where there is no estoppel, it could be reasoned from the above decisions that the ordinance would not be valid, regardless of Section 17-613, 1943 Revised Statutes, where it is stated as follows:

> "When ordinances are printed in book or pamphlet form, purporting to be published by authority of the Board of Trustees or city council, the same need not be otherwise published, and such book or pamphlet shall be received as evidence of the passage and legal publication of such ordinances as of the dates mentioned in such book or pamphlet, in all courts without further proof."

The safe procedure would seem to be to have an ordinance passed in the usual manner before including it in the code.

In order for the lawyer to assure himself that final approval will be given to the work over which he has spent many hours, he should divide the code into its various chapters and deliver these chapters to the departments responsible for their enforcement, requesting that each department head read the portion of the code given to him and make suggestions as to any omissions or additions that should be made.

The last step in completing an ordinance revision is indexing the various sections in order that city officials will be able to find the laws with the least amount of effort. All the ordinances that comprise each section should be indexed and, because most of us are used to an alphabetical index, this type is perhaps the system that should be used.

After checking the new code against the old code to be certain that nothing has been omitted which should be included, the revision is ready for passage. Remember, however, that the city has only thirty days in which to publish the code after passage and therefore the tentative contract for publication should be made before final passage.

It has not been possible to give you all the detailed steps in making an ordinance revision, but each attorney will have to work out his own system, and will probably include many of those which I have given this afternoon. The most important part of an ordinance revision, in our opinion, is that the code be revised in a manner that will facilitate the incorporation of future amendments. To do this, we feel that future revisions should use the loose-leaf system.

EVERY DAY PROBLEMS OF CITY ATTORNEYS

By

Jack M. Pace

Bob Perry has given me the subject, "Everyday Problems of City Attorneys."

At the time Bob asked me to be here this afternoon, Lincoln was getting ready to receive bids and let a contract for the construction of a five-million gallon water reservoir as part of our $6,000,000 water expansion program. When he called, little did I suspect the multitude of legal tangles which lay ahead in connection with this one letting—every single one of which could have been avoided had a competent attorney been consulted in advance.

With your permission I shall use this experience to illustrate how NOT to let a contract. This might prove helpful to any of you who by accident or otherwise have an opportunity to work with a consulting engineer who doesn't feel that he has a sacred duty to keep the contract documents a secret from the city attorney.

In the case of this particular contract, trouble commenced with the opening of bids. The Kansas City Consulting Engineers we were using on this job, instead of fixing a completion date, had required each contractor to set his own time of completion. On this reservoir early completion is of vital importance, and the instructions to bidders so stipulated. A 200-day completion date would give us this additional water in June of next year while a 290-day date would for all practical purposes leave us high and dry for another summer.

Out of nine bids, the following were all that merited serious consideration:

Roberts Construction Company	$242,000.00	270 days
Dobson Brothers	$246,000.00	200 days
Olson Construction Company	$259,000.00	210 days

Problem number one is apparent. The Roberts bid is low by $4,000 and the Dobson bid saves 70 days just at the time of year when the saving is of paramount importance. After grappling with this dilemma for an hour or so a cooler head suggested that Roberts be contacted informally with the idea of learning if they really wanted and needed the extra 70 days.

By way of reply, Roberts pointed out the second error which had creeped into the contract documents. The penalty for noncompletion had been fixed at only $50 per day. In view of this, Roberts pointed out, if Dobson took 270 days instead of 200 days, the penalty would only be $3,500 and the Roberts bid would still be low by $500.

Notwithstanding the validity of this argument, Roberts indicated a willingness to voluntarily enter into a contract with a shorter com-

pletion date, and the Legal Department was asked whether this could legally be done. Our job was over when we found Fairbanks, Morse & Co. v. City of North Bend, 68 Neb. 560, 94 N.W. 537. In that case Fairbanks, Morse had been permitted to submit a supplemental bid after the bids had been opened to give the City an alternative in selection on one of the major items. The contract entered into thereafter was held to be void. The Court said in the syllabus:

"The object of (the statute requiring that bids be advertised for) is to invite competition, and to prevent favoritism and fraud; to attain that object it is essential that the bidders, so far as possible, be placed on equal footing, and be permitted to bid on substantially the same proposition, and on the same terms.

"Where a bid, filed within the time fixed by the advertisement for receiving bids, is substantially changed and modified after such time, it is to be regarded as a new bid, received after other competitors, by the terms of the notice, had a right to presume that the contest was closed; consequently, its acceptance would be in violation of the provisions of said subdivision, as above construed, and would impose no liability on either party."

Obviously, to have permited Roberts to reduce its completion date would be an alteration of its bid in respect to a material matter and would have resulted in an unenforceable contract.

With this settled, the City Engineer formally recommended the acceptance of the Roberts bid as the lowest and best and the matter was submitted to the City Council.

Trouble developed at once. One of the members of the Council announced that he had heard that Olson Construction Company owned Roberts Contruction Company. He then inquired whether or not this fact, coupled with the fact that Olson had also bid the job, invalidated both bids.

Paragraph 4 of the instructions to bidders provided as follows:

"No bidder may submit more than one proposal. Two proposals under different names will not be received from one firm or association."

The Council recessed and the Legal Department again had to go to work. Factually our job was an easy one. Dunn & Bradstreet showed that 97% of the Roberts stock was owned by the Olson Company, and the companies involved cooperated fully in disclosing that Mr. Olson was the president, and, for all practical purposes, the man who had the final word in the affairs of both companies.

However, their attorney quite properly rested his case on the proposition that in the eyes of the law these were two separate and distinct corporate entities.

Although accepting this as the general rule, we retreated to the books in search of the exceptions. On the general question as to when

the corporate existence will be disregarded there are excellent Annotations in 1 A.L.R. 610, and 34 A.L.R. 597.

Although the rule has been stated in many ways, the following is as good as any:

"The fiction that the corporate existence and corporate functions are distinct from that of the stockholders is introduced for convenience, and to subserve the ends of justice; but when invoked in support of an end subversive of its policy, should be and is disregarded by the courts."

The Nebraska cases recognizing and following this exception are:

Mass. Bonding & Ins. Co. v. Master Laboratories, 143 Neb. 617
Bordy v. Goodman Buckley Trust Company, 131 Neb. 342
Ehlers v. Bankers Fire Insurance Company, 108 Neb. 756

Notwithstanding the fact that the contract provision prohibiting duplicity of bidding is printed into every contract form prepared by consulting engineers which I have ever seen, in identical language, we have found no case in which any court has been required to discuss what constituted a violation of the provision or the consequences thereof.

It is apparent, however, from the holdings in related cases, that the motives of the bidder and the possible consequences to the city are the prime considerations in deciding whether or not the corporate entity should be disregarded in this situation.

In the instant case there has been no hint of improper motives or purpose on the part of Olson and Roberts. Only two situations have come to mind where duplicity of bidding could result in fraud on the municipality.

First, it could be used to give the impression of competitive bidding when in fact competition was not present. In the case of this contract the bidding was actually highly competitive, so this did not concern us.

A second possibility might be visualized if we assume that there had been no Dobson bid. The situation would then be this. Roberts would be low with a bid of $242,000, and Olson second with $259,000, a difference of $17,000. Roberts accompanied its bid with a certified check of $12,000. Assume further that Roberts forfeited its check and the contract were let to Olson. The contractor would thus net $5,000.

We were certain that the two bids we were considering were not made for this purpose, and with the Dobson bid in between, such a maneuver would have been impossible.

To make a long story short, we crossed our fingers, relied on the provision in the instructions to bidders that the city reserved the right to waive all irregularities and accept the bid deemed to be in the best interests of the city, and reported to the Council that it could accept the Roberts bid if it felt it to be lowest and best.

By this time everyone concerned was getting a little irked with this whole mess. The upshot was a request for an opinion from the Legal Department as to whether all bids could be rejected and new bids accepted, the delay of advertising being dispensed with on the ground that an emergency existed. Some three weeks having elapsed since we had had occasion to look up this question in connection with another matter, we again retired to the library.

Pulling out Volume 10 of McQuillin, it fell open to Sec. 29.38 where the author sets for the the universally accepted rule:

". . . an emergency which will warrant dispensing with advertising for competitive bids must be present, immediate and existing, and not a condition which may or may not arise in the future or one that is about to arise, or a condition which reasonably may be foreseen in time to advertise for bids."

Lincoln's water shortage had been anticipated for some two years and had been real during most of the two preceeding summers. In view of this we reported that if all bids were rejected the city must readvertise.

The Council was now ready to vote. It might be appropriate at this point to interject that in these deliberations the Council and other interested city officers were not cloaked with that sense of security which comes when one has an idea that no one will question the result if it is reached by an orderly and honest approach.

Far from it. There has been a deluge of taxpayers' suits in Lincoln, brought by a former member of this Association, each attacking directly or indirectly almost every construction contract we have let in the last year or two.

Three resolutions had been prepared. One rejected all bids and directed the clerk to readvertise, a second accepted the Roberts bid, and the third accepted the Dobson bid.

The first two failed to carry. The Dobson bid was accepted and a contract entered into.

Eight days later, on October 29, an action was commenced in District Court attacking the validity of the contract and enjoining payouts thereunder based upon the engineers monthly estimate of work completed. On motion of the city, the case has been set for trial on November 17.

In our opinion, the only serious question raised by plaintiff's petition is the charge that the Dobson bid was not the lowest and best. We assume that this contention is based on the fact that it was some $4,000 higher than that of Roberts. On the other hand, our defense must rest primarily upon the 70 day saving in completion time.

The case of *Best v. City of Omaha*, 138 Neb. 325, reviews the earlier cases and contains the most exhaustive development of the questions here presented which I have found.

At the outset the court enunciates the well accepted proposition that the Council has some discretion in the awarding of contracts, and that the courts will hesitate to intervene in such case. Thus the court said:

> "(1) Public administrative bodies possess a discretionary power in awarding contracts, in considering the responsibility of bidders, and in determining questions of public advantage and welfare.
> "(2) Where there is a showing that the administrative body, in exercising its judgment, acts from honest convictions, based upon facts, and as it believes for the best interests of its municipality, and where there is no showing that the body acts arbitrarily, or from favoritism, ill will, fraud, collusion, or other such motives, it is not the province of the court to interfere and substitute its judgment for that of the administrative body. *State v. Board of Commissioners,* 105 Neb. 570, 181 N. W. 530.
> "(3) It is presumed that a public administrative body acts in good faith, with honest motives, and for the purpose of promoting the public good and protecting the public interest.
> "(4) It is not the policy of the law to prevent a public administrative body from properly exercising its discretion in administering the affairs committed to its charge for the best interests of the municipality that it represents."

The *Best Case* (supra) also involved a situation where there was an urgent necessity that the work be completed without delay, and was a case where the contractor was permitted to fix his own completion date. The court was asked to hold that the provision requiring each bidder to designate the time required was invalid. In holding to the contrary, the court said:

> "In the instant case, time is an important element, both because of the injunctive order and because of W.P.A. assistance. It might be that a contractor would propose to do the work more quickly than the city had specified in its proposals. The city should not be prevented from taking advantage of such a saving of time if the council deem it best to do so. The city council may, therefore, determine which course is for the best interest of its municipality, and, if it so desires, permit bids to be proposed in which the bidder fixes the time for completion. *This permits the city council to consider the time of completion in conjunction with and as a part of the other elements that enter into the determination of who is the lowest responsible bidder.*"

It would seem from the foregoing, in the absence of fraud, bad faith or favoritism, that a determination by the city council that 70 days on a contract of this sort are worth as much or more than $4,000, should not be re-examined by the court.

However, I hope to see all of you next year, and I will likely be able to give you a very definite answer to this question at that time.

CONCLUSION

As I said at the outset, every one of these problems could have been averted if an attorney had had an opportunity to examine the contract documents at the outset.

In the first place, to the paragraph in the instructions to bidders which limits each bidder to one proposal, the following language could be added: "Proposals received from two or more corporations or associations which are controlled by the same person or group of persons, associations or corporations, or which have interlocking directorates or officers, shall be deemed in violation of this section." In conjunction with this, language should be added to the paragraph which gives the City the right to waive any irregularities in a proposal, which permits the City to waive, if it seems fit to do so, a violation of the preceeding paragraph limiting each bidder to one proposal.

In addition to the foregoing, except in a most unusual case, the completion date should not be left up to the contractor. And, in the unusual case where he is required to name his own date, the penalty should be large enough to guarantee that the date he selects is the one he intends to meet.

Had these simple precautions been taken, hours and hours would have been saved and the City of Lincoln might have been spared a law suit.

One further and much broader observation I would like to make for what it is worth. The bar is beoming increasingly aware of the usurpation of legal work by nonlawyers which has been going on over the years.

Let me read to you provisions contained in the last two contracts which the City of Lincoln has entered into with two different firms of consulting enginers, one local and one from another state.

In one, the engineers undertake to prepare and furnish to the city all "plans, specifications and *contract documents*" for the contemplated project.

In the other, the proposed "enginering service" includes furnishing "plans, specifications and *all documents required for receiving bids and awarding construction contracts.*"

It is with temerity that I venture upon this sacred ground. But why, may I ask, should the engineers and architects do the legal work in connection with all the major construction contracts in the state? Would this be a proper subject of inquiry for our Committee on the Unauthorized Practice of Law?

ANNUAL BANQUET SESSION

November 12, 1953

The Fifty-Fourth annual dinner of the Nebraska State Bar Association, held in Hotel Paxton, President Williams presiding.

Seated at the head table were Dwight Wallace of Evanston, Wyoming, president of the Wyoming State Bar Association; R. F. Clough of Mason City, Iowa, president of the State Bar of Iowa; John D. Randall of Cedar Rapids, Iowa, State Delegate to the House of Delegates of the American Bar Association from the State of Iowa; John E. Mulder of Philadelphia, Pa., Director of the Committee on Continuing Legal Education of the American Law Institute collaborating with the American Bar Association; Honorable Robert G. Simmons of Lincoln, Nebr., Chief Justice of the Supreme Court of Nebraska; L. J. Bond of Eldorado, Kansas, President of the Kansas State Bar Association; Charles S. Whittaker of Kansas City, Missouri, President of the Missouri Bar Association; Don Hyndman of Chicago, Ill., Public Relations Director for the Committee on Public Relations of the American Bar Association; Richard P. Tinkham of Hammond, Indiana, a member of the Board of Governors of the American Bar Association; Honorable Clarence A. Davis of Lincoln, Nebr., Solicitor of the Department of the Interior and Association Delegate representing this association in the House of Delegates of the American Bar Association, a past president of the Nebraska State Bar Association; J. D. Cronin of O'Neill, Nebr., president-elect of the Nebraska State Bar Association.

Roy E. Willy of Sioux Falls, So. Dak., past Chairman of the House of Delegates of the American Bar Association was introduced and spoke briefly, bringing greetings of the American Bar Association.

Honorable Jerry Giesler of Beverly Hills, Calif., was principal speaker at the annual dinner. His most entertaining address was entitled "Trial Reflections from the Defense Table."

Friday, November 13,1953

SECTION PROCEEDINGS

Section on Real Estate and Probate Law
Phil B. Campbell
Chairman

"MEETING JOINT TENANCY IN YOUR OFFICE"

A PANEL DISCUSSION

Moderator
PHIL B. CAMPBELL, ESQ.
Chairman of the Section

Members of the Panel
ROBERT R. MOODIE, ESQ.
West Point, Nebraska

JOHN R. FIKE, ESQ.
Omaha, Nebraska

DAVID R. WARNER, ESQ.
Dakota City, Nebraska

FRIDAY MORNING SESSION

Section on Real Estate and Probate Law

November 13, 1953

The Section on Real Estate and Probate Law was called to order at nine-forty o'clock by Section Chairman Phil B. Campbell of Osceola.

CHAIRMAN CAMPBELL: Ladies and gentlemen, last spring during the Missouri Valley Bar meeting here, the President called a meeting of the officers of the Association and the officers of the various sections. We had a breakfast meeting, and when that adjourned several of us had a round table discussion of a lot of points, as we frequently do. Finally somebody, I think it was Clarence Spier, a Vice-President whom we expected to have with us on this panel but he was called out of town, said, "What do you tell a fellow who comes into your office and says, 'I want all of my property put in joint title. Will you fix it up?' "

Before the waiters finally pushed us out, Mr. Spier, Mr. Wellington, Dave Warner, and I had a very interesting hour exchanging ideas on that question. As we were leaving, some one—I think it was Mr. Spier —said, "Why wouldn't that make a good bread and butter subject for your section this fall?"

So we started work on it. A lot of work has been done, but I want to tell you in advance that some of the members of the panel didn't see this material until a short time ago, so they are going to ad lib because some of these ideas didn't agree with theirs. I sent it to them a month ago with the suggestion that they look it over and that we get ideas correlated in the meantime. They read it day before yesterday afternoon when we had a dress rehearsal. We had another one yesterday and straightened out some things on it.

Despite the Moodie pamphlets that have been out and various programs that have been held on this subject, and many magazine articles, some of which are misleading, there still is a lot of misinformation on this question. We don't expect to straighten it all out here this morning either, I don't mind telling you.

Every practicing attorney, whether he is in the city or the country, is all too familiar with the tragic situations that arise in all too many instances by people who don't know anything about what they are doing fooling around with joint tenancy. There are few, if any of us, who do not from time to time have this thing come up, and we face the exceedingly difficult proposition of telling the client that joint tenancy is not what he wants. This is complicated in from ninety to ninety-nine times out of one hundred by the feeling of the client—or at least, we think he feels—that when we try to discourage a joint tenancy, we are doing it for our own benefit in the hope of getting later fees out of him if he happens to die first.

So we have those problems as to how to get this across to the client. We followed up the suggestion of last spring in presenting that type of a program. These ideas are not guaranteed to be sure fire. They don't carry any magic. They are just some ideas that a group of fellows have put together. We realize that you men, and ladies, may have better ideas. If so, we hope to get them before we get out of here today.

Since we started on this last spring, the case of Crowell v. Milligan was decided, and that threw some more monkey wrenches in the machinery. It was felt certain that we should give some attention to that and perhaps post some red flags.

We have arranged to have this program recorded and appear in the Journal, so it will be necessary in the latter part of the program that any questioner or commentator state his name and comment so it may be heard by the reporter and put in the record.

Will Mr. Fike, Mr. Moodie, and Mr. Warner join me up here for the panel.

Mr. Moodie, let's start with something easy. Suppose your client, a real estate broker, comes into your office with Mr. B, for whom you have done a little work in the past, and Mr. A whom you never saw before. The broker tells you he has sold B's house to A, and that they

want you to prepare a contract fixing it so A and his wife will get the property as joint tenants. What would you do?

MR. MOODIE: I never heard of a real estate agent going to a lawyer to write a sale contract. I wouldn't know what to do. (Laughter)

CHAIRMAN CAMPBELL: All right, leave him out of it. The same B and A come in. B, whom you know, does the talking and makes the same request. What then?

MR. MOODIE: What is the selling price?

CHAIRMAN CAMPBELL: $5,700.00.

MR. MOODIE: I would probably write the contract as requested without asking any questions beyond what are the terms of sale (it says here in this script).

CHAIRMAN CAMPBELL: Not that you would do that in your practice. Would A's age make any difference?

MR. MOODIE: In this situation, I think not, at that selling price.

CHAIRMAN CAMPBELL: Wouldn't you make any inquiry of A with respect to his desire for a joint tenancy deed?

MR. MOODIE: I doubt it, at least not if it's apparent the house is being purchased for a home. I never saw A before, but the amount he is paying for the house suggests his estate is quite modest in size. He hasn't asked my advice, and until in some manner he indicates he wants it I think I ought not to volunteer it. No gift tax problem, even to the extent of filing a return, would be involved since one-half the price of the house is less than $3,000. If there is any place where a joint tenancy may be proper and appropriate, it is in the ownership of their home by a husband and wife. Although we lawyers don't apply the maxim, "The customer is always right," we probably ought to let them have their way without argument occasionally when we can't foresee any particularly harmful results in doing so. Without something further appearing, I would consider it inexpedient to open up any possible lengthy discussion of joint tenancy in a situation such as this.

CHAIRMAN CAMPBELL: Well, suppose the selling price of the house is $11,400.00.

MR. MOODIE: In that case, at least if the entire purchase price is to be paid in one calendar year, I would ask A if he is putting in all the money or if his wife is paying a part of it. If all the money is coming from A, I think I am obligated to point out to him that taking title in joint tenancy will require the filing of gift tax returns. If this starts him asking questions, we would probably get into a rather full discussion of whether he really wants the joint tenancy. If it doesn't excite him to further questions, I think, for the same reasons stated before, that I would in this situation go no further.

MR. CAMPBELL: Let's suppose A is the person you have worked for before, although he is not what you consider a regular client. Other-

wise, the facts remain the same; the selling price is still $11,400.00. Is it time yet to open up on the joint tenancy?

MR. MOODIE: Again it says here, if I have not previously gone over with A his plans for his estate, or at least if I have no particular knowledge of what property he has and how he owns it, I doubt that right now is the time. However, whether I do or do not have any particular knowledge as to his other stuff, I would mention the necessity for gift tax returns, and I think I would go further than that and suggest that we name him only in the contract, and ask him to come in again before or at the time the contract is ready for closing to discuss whether he really wants the joint tenancy. Since the horrors of the community property days are past—I hope—I think I can safely tell him that even though he alone is named in the contract, he can without any difficulty accept a joint tenancy deed in performance.

CHAIRMAN CAMPBELL: All right.

Now, Mr. Fike, let's assume that A accepted Moodie's suggestion that the contract at least be not made joint. But he is a pretty sharp fellow and he reasons like this: "The only reason I asked to have that contract made so Mother would get the house if something happens to me is that article I read in SCRIBBLE Magazine, where it said joint tenancies with right of survivorship can save a lot of money in the expense of estate administration. That Moodie may just be looking to the future in hopes I die before he does and he may get to administer my estate. I never could trust that guy—that's why I've never gone to him more often. I'll just go talk with John Fike a little. He may not know as much as Moodie, but he belongs to the same church as I do and he's not interested in money (Laughter), at least from the amount of money he gives away you'd think he hasn't got any." (Laughter)

So Mr. A comes into your office, tells you he is buying a new home, and he wonders whether it's wise to buy it in joint tenancy with his wife, or whether he should buy it in his name alone. He doesn't tell you the contract is already made or that Moodie prepared it, so you don't have to worry about stealing Moodie's client.

MR. FIKE: Well, he is asking for specific information and advice, and I believe his question calls for an exploration of his entire situation. I would want to determine, if I don't otherwise know, his and his wife's approximate ages; how long he has been married; how many children there are, and if he and his wife are both the parents of all the children; the ages of the children, if any; how the house will be paid for; what other property A has and how he owns it; what, if any, separate property his wife has and how that is owned; whether A has a will, and if so, generally the provisions of it; what is A's reason for thinking he wants the joint tenancy.

CHAIRMAN CAMPBELL: What difference does A's age make?

MR. FIKE: It has considerable bearing on whether there may be

more children than at present and upon the question whether A's property may increase substantially in the future.

CHAIRMAN CAMPBELL: O.K. You determine that A is forty-two years old and his wife is thirty-nine. His present wife is his first and only wife, and they've been married seventeen years. They have three children, ages fifteen, thirteen, and five. He is paying $3,400 in cash for the house, and the balance he is borrowing on a twenty-year FHA mortgage, payable in equal monthly installments over the term of the loan. The $3,400 down payment came out of a savings account which was joint between him and his wife. He plans to make the monthly payments from earnings by check on a personal checking account he has, which is also joint with his wife. He owns and operates a small store on rented property, in which he has a net worth of maybe $10,000, and which yields him a net profit of $5,000 to $6,000 a year. He guesses all the store assets are in his name only; at least, he doesn't recall having done anything to make his wife a joint owner of any of them with him. He keeps a separate checking account for the business on which his wife has no authority to write checks, and for his living expenses he transfers funds from this account to the personal joint checking account. He has a $15,000 life insurance in which he has some cash value, but he hasn't much of an idea how large; it's all payable to his wife, with the kids as contingent beneficiaries. The savings account is shot, since he has made the down payment on the house, and there's only a small balance in the personal checking account. He has a 1951 Buick Special worth maybe $1,000, and that's in his name alone. He hasn't much else outside of household goods and the like.

His wife has no separate property, but she may inherit about $10,000 one of these days. A, himself, has no prospects of inheritance. Altogether it looks like the present value of A's and his wife's property, less household goods and the wife's prospective inheritance, and also less the life insurance, would be around $15,000. He hasn't any will, never figured he had enough property to make it worthwhile making one, but the business has been going pretty good; he just bought it a couple of years ago for $5,000 with money he had saved out of wages, and since then it has supported the family and paid for a $5,000 net increase in his inventory and equipment—so he supposes he ought to be thinking about a will.

As for his reason for wanting the house in joint tenancy, he tells you about the article he read in SCRIBBLE, and also Banker Brown who is arranging the loan for him said he wanted to be sure to have title to the house made joint.

MR. FIKE: Well, you have a lot of facts there and the answer is not easy. I think about this time I would wish this fellow had stayed with Moodie, or that I hadn't explored so far.

But perhaps when I find out the down payment has come from a joint checking account and that all future payments will probably be made with money which passes through a similar account, I could pretty well duck the real problems by telling him he might as well take the title in joint tenancy. That's probably what he'll have even if he takes title in his name alone.

CHAIRMAN CAMPBELL: Why do you say that?

MR. FIKE: If our Supreme Court meant what it said last spring in the case of Crowell v. Milligan, that very well might be the result, even though it clearly appeared that all money which went into the joint accounts was A's at the time of deposit and title to the house is taken in A alone.

CHAIRMAN CAMPBELL: Well, we expect to go into that problem in considerable detail a little later. I wonder if you wouldn't just as soon pass over that solution for the time being?

MR. FIKE: Yes. I probably wouldn't be satisfied with that answer anyway. It is not unlikely that in such a situation the court would find that the wife by implication had consented to this application of funds from the joint accounts, and the rule stated in the Crowell case might have no application.

CHAIRMAN CAMPBELL: What would you do, then?

MR. FIKE: I think it would not be advisable for this man to take title to the house in joint tenancy with his wife. It would be impractical from a business standpoint, without regard to the legal consequences, for him to try to put all his property in joint tenancy. Therefore, I can see no advantage in having the home in joint tenancy, except possibly to reduce slightly the expense of administering his estate. This slight advantage is far more than outweighed by the possible disadvantages, which are most, if not all, of the undesirable consequences which attach to joint tenancies.

In answer to the question he asked me, I would try to explain to him just what is involved in my conclusion that the joint tenancy is useless.

Since he is apparently motivated by a desire to save on administration expenses, I think I would first mention why it would not be practical to get everything he has into joint tenancy, and that regardless of what he does with the house, his estate would have to be administered anyway. The difference between the expense of administering his estate with the house in it, and with the house out of it, would not be very large and would be a small amount to pay for insurance against the possible disadvantages.

Then I would undertake to point out what the possible disadvantages in his case would be, and there are many of them.

First, he would lose his power to control by his will disposition of the house in case his wife survives him. Even though he might wish

in making his will to give the house outright to his wife, I would consider this definitely a disadvantage to him. He has not only his wife but three minor children to think about. In working out an estate plan which recognizes the needs and the interests of the children, there will be less difficulty and more freedom of movement if none of his property is restricted by joint tenancies with his wife. This is particularly true when the client's property is no more than A's at present. I would probably mention the possibility of the joint tenancy cutting out his children completely in case of the wife's remarriage, followed by another joint tenancy with the new husband—although this is not strictly a consequence peculiar to joint tenancy—it could follow as easily from devising the house outright to his wife.

But the main point which I would try to impress on him in this connection is that of keeping his property in such shape that he is free to plan for the event of his death in the light of changing circumstances. If he wants his wife to have absolute ownership of the house upon his death, make a will and give it to her, and then if something happens which makes a different arrangement desirable, he is free to change it. Suppose the wife should become mentally ill and confined indefinitely in an institution? That, and other possibilities, cannot be predicted with any certainty.

Second, since his wife isn't with him, I could probably speak fairly freely of what could happen in case of marital difficulties, the possibility of severance by a voluntary conveyance or partition, the possible effect which the joint tenancy might have on a court's decision as to the property settlement in case of divorce, and even the possibility of severance by sale in execution at suit of a creditor of the wife, in case of separation without other division of their property.

Although I said I could probably speak freely of these consequences since his wife is not with him, I think perhaps the same frank sort of discussion should be had even though both husband and wife are there, as I believe it is more important to advise the parties of possibilities which could happen, than to worry about offending one of them with a suggestion of separation or divorce.

In this connection I also think it would be advisable further to emphasize the complications which may result in case of incompetency of the wife and a desire to sell the house. 'Of course, there are complications in the case even if title is in the husband alone. But they are greater if the title is joint. Suppose this should happen and A wants to sell this house and buy another. How much of the proceeds of the sale of this house will he be free to invest in the other?

Now, so far we have discussed, first, loss of control of the property and the ability to plan or revise in the light of changing circumstances; and second, marital difficulties.

Now, if Mr. A is not already convinced, there is a third point we could talk about, and that is how a joint tenancy might affect his credit. In his business he undoubtedly requires some of that, and since the business seems to be growing nicely, he'll probably be needing more. A should understand that his banker cannot be expected to lend money, or his suppliers to advance credit on the strength of assets he holds in joint tenancy with his wife; at least, not unless the wife also guarantees payment. It's true, of course, that the particular property in question will be A's homestead, and his creditors would probably not expect too much out of it anyway. But be that as it may, A's property statement will be weaker with this house in joint tenancy than if it were in his name alone. And I think every businessman who depends on the extension of credit, as well as lenders, should be ever mindful that a debtor's property which passes to a non-debtor joint tenant by right of survivorship may very likely be beyond the reach of the debtor's creditors.

Fourth, I would suggest the duty to make gift tax returns which taking title in joint tenancy might impose. I am not sure whether in a case such as the one we are discussing there is a gift in excess of the annual exclusion. In the absence of a definite answer, I would think the safe course would be to file returns.

Fifth, I would probably talk some of the possibility of a substantial growth in the size of his estate and of the further possibility of estate tax considerations being involved at a later time. This, of course, would be pretty uncertain, and A probably wouldn't be too much interested in it. But there is a strong likelihood of his estate growing substantially and the estate tax laws might change for the worse. We can't hope that the Republicans will stay on forever. (Laughter) Without going into tax talk at any length, I would try to convince him of this.

If there is ever any real tax or other advantage to be gained by having this house in joint tenancy, he can always put it that way provided only he's alive and competent. But if he puts it that way now, and it develops at a later day there would be a definite tax advantage if the tax title were not joint, it might not be nearly so easy to go back the other way.

Finally—and this is beyond the joint tenancy— I would not overlook what he told me at the outset about thinking some lately of making a will. I would suggest that now is the time to go ahead and act on that, and if he would permit it, I would try to help him get a plan worked out which would reasonably protect the three children as well as the wife. I think—and I think so from the standpoint of serving our clients rather than from that of searching for business—we ought always to take the bait when given a fair invitation to offer our services toward the end of aiding a client in working out an adequate plan for his estate.

The adequacy of an estate plan may be even more important in smaller estates than in the big ones. And this is especially true in a case which involves minor and dependent children.

CHAIRMAN CAMPBELL: Now, Mr. Warner, a lady comes into your office and tells you she wants you to fix a will for her. She is a widow, fifty-five years of age, and she has four children, all of whom are of age. She wants everything she may have at the time of her death divided equally among the children, with the issue of any who may die before her to receive the parent's share. She doesn't have too much property, mostly farming equipment and some livestock and her bank account. She had that made joint some time ago with one of the boys who had been at home helping her with the farm, but he is in the Air Force now and expects to get his wings next week. That is how she happens to be thinking of a will now—she is making a trip next week to attend his graduation. The reasons she had for making the bank account joint is so he could take care of paying funeral expenses, bills, etc., without any red tape in case of her death. Of course, he will divide any money not needed for those purposes equally with the others. Are there any particular problems in the job she asks you to do?

MR. WARNER: Well, the joint bank account raises a problem which ought to be disposed of. If she wants everything to go equally to the children, she had better do something about that account. Occasionally I find a client who is not entirely receptive to the suggestion that he can't be sure the child who has been made a joint tenant in his bank account will divide up with the others. In this case, though, the explanation should be easy. In addition to the possibility that the joint tenant might assert his right to the entire account at the client's death, there is the fact that he is away from home now and will probably continue to be for some time, and he is just not in a position to carry out the thing the way she has it planned.

CHAIRMAN CAMPBELL: All right. She falls in readily with your suggestion that the joint bank account is a poor idea. How would you suggest that she eliminate this problem?

MR. WARNER: I had just this situation in my office last spring. I advised the client to close out the joint account and redeposit the funds in her name alone. I did not suggest that she obtain the consent of the joint tenant, and I was satisfied that I had given her good advice. I have always been of the impression that if I put my money into a joint bank account, I can withdraw it at will without accounting to the other joint tenant; that is, that there is no gift or other transfer to the joint tenant until the other tenant withdraws some of the funds from the account, or until I die, with the other joint tenant surviving. This has definitely been the rule with respect to liability for federal gift tax—there is no gift until the non-contributing joint owner withdraws funds from the account.

But under the rule stated in the case of Crowell v. Milligan, 157 Neb. 127, which opinion was filed June 12, 1953, the advice which I gave this lady was not good advice, and if it were acted upon by her, it might be the basis for much litigation. Under the rule of that case, if I put my money into a joint bank account, the instant the deposit is made the right of survivorship attaches and it cannot be divested without the consent of the other tenant. This is true even though the other tenant has never made any contribution to the account, and even though I intend to retain full control over the account except in case of my death, and the other joint tenant, recognizing that intention on my part, does not assert any right to the account except in the eventuality of my death. I cannot deprive the other joint tenant of this right of survivorship by taking the money out of the account. In case of my death after such withdrawal, the other joint tenant can claim by right of survivorship the entire fund which I had withdrawn to the extent that it can be traced.

CHAIRMAN CAMPBELL: Could any provision have been suggested for the lady's will which would take care of this problem without getting the joint tenant son's consent to the withdrawal?

MR. WARNER: I think of nothing, except that we could have provided in the will that in case the son asserted a right by survivorship to the funds withdrawn from the account, his share in the property given him under the will should be decreased by the amount so claimed. This would hardly be a satisfactory solution if the bank account was substantially larger than the son's share of the other property.

Before we get too far away from it, I do have some further thoughts on the Crowell case. As stated, that case involves the question whether the creator of a joint account can divest the right of survivorship by withdrawal of the funds deposited in the account. But I think the rule there stated, if carried to its logical conclusion, must have this further result: Whenever money is deposited in a two-name account in a bank in Nebraska, a gift of an undivided one-half is made by the depositor to the other "joint" tenant, with the right of survivorship attaching to the whole. In the absence of an express agreement to the contrary, the noncontributing depositor to the extent he can trace them, can, even during the lifetime of the creator of the account, claim one-half of all funds which go through the account, except where it can be shown he has consented to the withdrawals and the application thereof.

It should be noted that in support of the decision in the Crowell case, our Supreme Court referred to Section 8-167 of our statute. This is the section of our banking law which authorizes a bank, in case of a deposit made in the name of two or more persons payable to either or the survivor or survivors, to pay the same to either of such persons or the survivor or survivors. It has been held in the past that the form of the deposit is not important, and even that words of survivorship

in the form of the deposit are not necessary. If the account is payable in form to either of two or more persons, the bank may pay in accordance with the right of survivorship. And it has also been held that this statute, which was originally intended for the protection of banks, also fixes the property rights of the persons named, unless the contrary appears from the terms of the deposit. I think it should be noted that the contrary must very *clearly appear*. Now the effects of this statute, which was originally passed for the protection of banks, have been extended to fix the property rights of the persons named in an account which is not in a bank at all, for in Crowell v. Milligan the money to which the right of survivorship attached was not deposited in a bank, but it was deposited and left with an individual.

I doubt that many Nebraska lawyers have been conscious of the indefeasible aspect of the right of survivorship in a joint bank account, which the Crowell case appears to establish. Probably even a lesser number of us would be willing to concede what I have suggested as the logical conclusion following from the rule of that case with respect to an immediate gift to the non-contributing co-tenant of an undivided one-half interest in all moneys deposited in the account. I do not doubt that an even smaller percentage of the thousands and thousands of people who use joint bank accounts in the State of Nebraska comprehend either of these results. Certainly we lawyers, for ourselves, our clients, and the public generally ought to examine pretty carefully some of the consequences of joint bank accounts which the Crowell case appears to suggest for the first time.

CHAIRMAN CAMPBELL: What have you in mind?

MR. WARNER: Well, gift tax, for example. Suppose a man makes $10,000 net a year and runs all his earnings through a checking account which is joint with his wife. Even though the money is all taken out for living expenses and the purchase of investments in the first depositor's name alone, isn't it true that at the end of six years he has used up his $30,000 lifetime exemption and after that will owe a gift tax for each year that he continues this practice? I wonder how many lawyers here today may possibly be guilty of failing to file gift tax returns and are liable for the payment of gift taxes for many years by reason of following a practice such as this?

CHAIRMAN CAMPBELL: Well, I think the Gift Tax Regulations as they presently exist do not provide for the payment of gift taxes upon the making of a deposit in a joint account, but only upon withdrawal by the non-contributing tenant.

MR. WARNER: Yes, I think that is right, but in view of the Nebraska law there is some question that the Gift Tax Regulations correctly interpret the Internal Revenue Code so far as it applies to gifts in Nebraska, and I do think that the rule of property in Nebraska as stated in the Crowell case would very likely control in determining the

liability to pay a gift tax and to file a gift tax return, regardless of what the Regulations of the Revenue Department may say.

CHAIRMAN CAMPBELL: I question that we can gain very much by speculating on that. Are there any other "new"consequences of a joint bank account which the Crowell case has suggested to you?

MR. WARNER: There are. One of them was suggested by John Fike some time ago before we got into this discussion. His client was buying a house. Mr. Fike advised him to buy it in his name. All funds which were to go into the house, although originally the client's separate property, would pass through a checking account which is joint between the client and his wife. Now suppose the client dies with the wife surviving. Whose house is it? Is it the wife's by right of survivorship, or is it the client's to be disposed of under his will or by the law of descent, subject to the wife's marital and homestead rights?

CHAIRMAN CAMPBELL: Mr. Fike suggested the Supreme Court in such a case might find the wife had consented to such withdrawal and application of funds.

MR. WARNER: Yes, but I wonder if we could necessarily count on that. Suppose the wife says she didn't consent? Suppose she claims she thought title to the house was joint, too? Suppose she claims she agreed with her husband that the house would be bought that way, and that he, after changing his mind about that had never informed her as to just how he was buying it. Because she had to sign the mortgage when the mortgage was given, she could very easily contend that she didn't know about the change in plan, thinking that when she did sign the mortgage it was because she had some other interest in the property other than her marital interest.

I think it would not be particularly difficult to overcome an implication of consent even in a husband and wife transaction such as this. And look at the opportunity for fraud which that situation does present!

I do think perhaps there is considerable merit in the safeguards which are provided by the Statute of Wills with respect to the disposition of property under a will. In view of the way that the law is developing with respect to joint bank accounts, co-ownership of United States Savings Bonds, and similar "convenience" arrangements such as those, it may be high time for the Bar to become interested in legislation which will provide similar safeguards with respect to the establishment, disposition of property through arrangements of that kind which will provide safeguards against fraud, similar to those which the Statute of Wills presently provides as against fraud in the execution of wills.

CHAIRMAN CAMPBELL: Mr. Moodie, Mrs. Doe comes to you and tells you that her husband died last month and that they had all their

property in joint title. She says, "I don't suppose there is anything to do, but I just thought I would inquire."

Upon inquiry as to the property owned and the family situation, you learn that there was real estate, a home worth about $10,000; stocks, bonds, and money in checking and savings account totaling $20,000; and life insurance in which she was the named beneficiary and which she has already collected in the amount of $20,000; and that they have two children, both adults. What would be your advice to her?

MR. MOODIE: Well, first, I think I would inquire as to how this property was accumulated, and if it developed that she had made no contribution to it—it all came from her husband's earnings—I would tell her that she didn't have too much to worry about, but that she would have to have a determination in the County Court as to what, if any, inheritance tax was due; that she would have to pay it; and that she would have to get evidence of her husband's death into the real estate records before she could have clear title to the house.

CHAIRMAN CAMPBELL: Of course this would be a big disappointment to her, as she tells you that they fixed things that way because they had been told that if they had everything in joint title there would be nothing to do when one of them died,and she winds up, "Do I really have to do anything?"

MR. MOODIE: I would tell her that if no one questioned her rights she could go ahead, but that some time when the house was sold, the question of inheritance tax would be raised by the title examiner, and that in the meantime whatever inheritance tax was due would be drawing interest unless it was paid within sixteen months from the time of her husband's death, and also that the public officials might bring an action for determination of inheritance tax liability, and it might be cheaper to have this determination now and avoid the possibility of having to pay interest.

CHAIRMAN CAMPBELL: But she says, "Well, I guess I'll not do anything now." And as she gets about to the door she turns around and says to you, "Oh, do I owe you anything?" (Laughter)

Don't answer.

AUDIENCE: What's the answer?

CHAIRMAN CAMPBELL: I told him not to answer. You all know the answer.

This next situation exists in Nebraska. I'll ask you this of you, Bob.

John Doe and Mary Doe, husband and wife, in 1932 through a third party as a conduit put 400 acres of farm land in joint title. In February, 1947, John died—that was before the change in the present inheritance tax law was in effect. Shortly after his death, without legal advice, a real estate dealer who was a notary doing the fixing, the widow

executed a joint title deed to herself and all of her children except one. That one child at that time was, and still is, a patient in the State Mental Hospital. This widow comes to you and says, "I want to sell the east eighty of my land." What would you tell her.

MR. MOODIE: I would tell her that she can't convey it without all seven children and their spouses joining in the conveyance, either to the vendee or back to her so that she can convey it. I think I would also tell her that as to the rest of the land, if any of those children died before her, or at any time, the others would take the title, and that child's children would be disinherited.

CHAIRMAN CAMPBELL: After telling her she cannot sell and convey without all children and spouses joining, she says, "But they were not supposed to have anything to do with that land until after my death." Does she have any recourse?

MR. MOODIE: Unless she has grounds to rescind. She might bring an action to rescind if she has grounds to rescind, or all the children could join in the deed to her.

CHAIRMAN CAMPBELL: You have already stated that in case of death of one child, that branch of the family would be disinherited. Does this incompetent child have any rights that you know of?

MR. MOODIE: I would hate to take his case on a contingency basis.

CHAIRMAN CAMPBELL: Now, gentlemen, the next part of this program has the scene set in a law office some place in Nebraska, and while it deals with a country situation, mostly farm land, the same rules I think would apply if this were in bonds, stocks or any other property. This was a matter that was discussed in our group meeting that we had last spring. There has been some discussion of putting it on here in full, but it doesn't take too long and may bring out some ideas that would be valuable to you.

I have asked Mr. Moodie to take the part of the lawyer and have advised him that if anything in the script doesn't agree with his ideas, he can ad lib. Mr. Fike will be the client. Will you gentlemen proceed.

MR. MOODIE: Good morning, Mr. Client, is there anything I can do for you?

MR. FIKE: We have decided we want to put our property in joint title. Will you fix up a deed for us?

MR. MOODIE: Is your wife with you today?

MR. FIKE: No. She doesn't have to do anything, does she?

MR. MOODIE: After you understand fully all the consequences of joint title, if you want it your wife will have to sign the deed.

MR. FIKE: I didn't know that. What do you mean about consequences?

MR. MOODIE: In the first place, why do you want your property in joint title?

MR. FIKE: Well, I have been told that it will save a lot of expense and taxes after I die. So I want to have my land fixed that way.

MR. MOODIE: Let's do a little figuring. How much land do you have?

MR. FIKE: We have those two farms of 240 acres each and that home we built in town.

MR. MOODIE: What is the property worth today?

MR. FIKE: I was offered $75,000 for one place last year and turned it down. It is not worth any less now. The other farm isn't quite so good with the improvements but most of it is irrigated, so I suppose it is worth about the same.

MR. MOODIE: What about the town property?

MR. FIKE: Well, it cost us about $15,000, and we turned down an offer of $16,000, but let's call it $15,000.

MR. MOODIE: What other property do you have?

MR. FIKE: But I guess that town property is already joint title—they told me.

MR. MOODIE: It seems to me you bought a lot and built the house. Is that right?

MR. FIKE: Yes.

MR. MOODIE: Who furnished the money for this?

MR. FIKE: I did.

MR. MOODIE: All of it?

MR. FIKE: Yes.

MR. MOODIE: Did you and your wife make gift tax returns the year you did it?

MR. FIKE: No. I didn't give her anything. Besides, do you have to pay taxes to give things away?

MR. MOODIE: That's right, and that is one of the consequences I was talking about. Have you ever heard of the Gift Tax?

MR. FIKE: No, I never did. And I think it's wrong if you have to pay to give things away. (Laughter)

MR. MOODIE: I won't argue with you about whether it is right or wrong, but it is the law. At the present time, whenever you give any one person more than $3,000 in value in any year, both you and the person you gave it to must file a return. And by putting a $15,000 property, which you paid for, in joint title with your wife, you have made a gift to her of $7,500, half the cost of the house. Both of you should have filed gift tax returns. But if that is the only substantial gift you have made, you wouldn't have to pay any tax.

MR. FIKE: But we got that money from the farm, so it was just as much hers as mine.

MR. MOODIE: But that is not the way the taxing authorities have been looking at it. Anyhow, assuming that is the only gift that you have made involving more than $3,000 in any year to any one person,

let's follow that up and see where we come out if we put everything in joint title as you asked me to do.

MR. FIKE: Would that make taxes?

MR. MOODIE: Let me explain this gift tax taw, as I understand it. I'm not a tax expert, but I believe this is right. Under the law there is an exclusion of $3,000 for each donee each year.

MR. FIKE: What's a donee? (Laughter)

MR. MOODIE: That is the person to whom you give something. You, as the person who gives it, are the donor.

MR. FIKE: Oh, I see.

MR. MOODIE: Under this exclusion clause you can give not over $3,000 per person each, and such gifts are excluded; no one needs to file a return and not tax is incurred, with certain exceptions as to when you die after the date of the gift, but let's leave that until later.

In addition, each donor—you, in this case—has a lifetime exemption of $30,000. You have used up $4,500 of yours on that house deal, even though you failed to report it.

Now, if we put the land in joint title, you are giving your wife another $75,000—half of the $150,000 of farm land—of which $72,000 would enter into the tax situation, because she has another $3,000 exclusion this year.

Put these figures together, $72,000 and $4,500, and you have $76,500 in gifts above the exclusions. Now we deduct your lifetime exemption of $30,000, and you have gift tax liability on $46,500.

MR. FIKE: Well, how much would that be?

MR. MOODIE: That, I will have to look up. See those books over there? Those are tax works which cost us about $250 a year to keep up-to-date so that we can answer your questions.

On the basis that we have been talking, the gift tax would amount to $4,672.50. Of course, we are talking only about real estate. Did you have in mind to do the same thing with your personal property?

MR. FIKE: I don't know if I would want to pay that tax. What if my wife should die before I do? What then?

MR. MOODIE: Of course, under the joint title, if you make it that way, the property would all be yours again after her death and would be in your estate when you die, for estate tax purposes.

MR. FIKE: How much would that be?

MR. MOODIE: You mean, if your wife dies before you do and you own all of the real estate, and the law is not changed, and values stay the same?

MR. FIKE: Well, I suppose that is about the only way you could figure it.

MR. MOODIE: On that basis you would have $165,000 worth of land. Your estate would have to add the personal property.

MR. FIKE: But I don't have much of that now. I spent my ready cash on the new house. Maybe I won't have any money or bonds when I die.

MR. MOODIE: All right, we'll figure it that way. You have $165,000 estate all in land. The estate would take off any debts, the expenses of burial and administration expense and the specific exemption of $60,000.

MR. FIKE: I thought you said it was $30,000 a little while ago. (Laughter)

MR. MOODIE: That was the lifetime gift tax exemption. Now we are talking about estate tax, after your death.

MR. FIKE: Well, with twice as much exemptions wouldn't it be better to pay the estate tax?

MR. MOODIE: Let's figure it out. Say you have no debts, and your burial costs $1,000, and costs of administration of your estate would be $5,000, and nothing else to deduct. That would leave $159,000. Deducting the $60,000 exemption would leave $99,000 subject to tax. The federal estate tax would be about $20,000, less some credit for the state estate tax and inheritance tax.

MR. FIKE: You mean there would still be other taxes?

MR. MOODIE: Oh yes! (Laughter) You have three children. If, on your death, they take all of your estate in equal shares and, again, if the law is not changed and values remain the same, and the figures we used before stay the same, they would pay state inheritance taxes of $1,290, most of which could be used as credit against the basic federal estate tax, which would reduce that to about $19,000. So as you look at it from just the first item, it looks like it would save money to make the gift, but when you look ahead you will see that if you die before your wife, her estate will be faced with the same tax situation on her death. In order to see just where the family is coming out, you need to look ahead and see the whole picture.

But let's follow this on through. If all of the things happen as we have assumed, then your executor has no money to pay taxes or expenses with because the estate is all in land.

MR. FIKE: Oh, I have that partly taken care of. I have $15,000 life insurance.

MR. MOODIE: Well, that changes the whole picture! (Laughter) That raises the estate to $180,000 instead of $165,000, so the tax would be higher.

MR. FIKE: Well, I sure never thought anything like that would happen.

MR. MOODIE: As we have assumed things to happen for our purpose, that is about where your estate would be. But there is another tax angle that might be even more expensive.

MR. FIKE: What in the world could that be!

MR. MOODIE: To get at that we will have to assume that things happen differently. Suppose we go ahead with the joint deed, and you die first so that the wife takes all this land under the deed. If you die within three years after making the deed, the law presumes that the gift was made in contemplation of death. Unless that presumption can be overcome, estate tax would have to be paid on all of this, after the exemptions are taken off.

By the way, what did you pay for your land?

MR. FIKE: I got the home place from my father's estate.

MR. MOODIE: What was it worth when he died?

MR. FIKE: I think that is in the records at the court house, but land was pretty cheap then. I don't thing it was over $100 an acre, maybe less.

MR. MOODIE: You said something about irrigation awhile ago. How much did that cost you?

MR. FIKE: I don't know what the total was, but I did it when all that stuff was a lot cheaper than it is now.

MR. MOODIE: Well, to simplify this thing, let's assume that the cost of the irrigation setup would offset the depreciation, so your investment in the home place is $24,000. What about the other farm?

MR. FIKE: The North 80 cost me $125.00 an acre, and the quarter section, $250 an acre.

MR. MOODIE: That would be $50,000 total. Now they are each worth $75,000, the way we are figuring it.

Assume that when your death occurs just as we have been doing, the life insurance will all be gone for expenses and taxes and still not enough. Your wife has to live and has to sell some of the land to get money. If she has taken it through joint title, her investment or cost basis is the same as yours was. She wants to hold the home place, of course, so she sells the other and has a gain of $25,000, of which one-half is taxable income, and the income tax is a little over $4,000. However, if she had taken it from your estate as by will, her investment or cost basis would be the value at the time of your death, and there would be no gain, nothing to pay any income tax on, so there would be that much tax saved.

MR. FIKE: I had no idea it was so complicated to have any property when you die. What do you think I ought to do?

MR. MOODIE: Well, so far as we have gone we have just been talking about taxes. There is another angle that might be even more important in your case.

MR. FIKE: What do you mean now?

MR. MOODIE: Well, I'm thinking about the family angle. Suppose we go ahead with the joint deed, and Mrs. Client owns all this property. She pays up your bills and whatever taxes she has to, and then in a couple of years she and some nice widower decide to get married. Then

they decide this joint title has worked so well they fix all their property that way, and then your wife dies first. The property would all be his.

MR. FIKE: But what about my children?

MR. MOODIE: They would just be out.

MR. FIKE: I sure don't want that. (Laughter).

MR. MOODIE: You can see how it might happen.

MR. FIKE: Then why not give each one of them an 80 now? The other would take care of us. But I would fix it to get the income as long as we live.

MR. MOODIE: If you are going to do that you might as well leave it in your own name so far as estate tax is concerned, for the law provides that if you retain any control, such as collecting the rent, it is a part of the assets of your estate for tax purposes.

By the way, what about grandchildren?

MR. FIKE: I have only two, both in one family. My boy and one girl don't have any children.

MR. MOODIE: That might be another reason against deeding any of the land to them. If you do that, and your child then dies without children, the husband or wife would inherit half of it, or might take all of it under a will, so that it would be clear out of your own family.

MR. FIKE: Well, I sure wouldn't want that.

MR. MOODIE: But to my mind, the most important thing is, just how sure are you that the income would take care of you and your wife? You and I can both remember the time when you have half of this land and couldn't pay your bills. Remember when I bought a release of a judgment for you? You don't know what you folks may be getting off those farms any time in the future, or what your needs may be. My advice would be to let the children have it when both Dad and Mother are through with it, and that means when both of you are dead. I could tell you of some real tragedies in this county where the parents had turned their land to the children.

MR. FIKE: I know all about one of them, when I get to thinking about it. The mother had to ask the children for everything she got.

MR. MOODIE: Sure you do, and that is only one of several.

MR. FIKE: Well, what is your suggestion?

MR. MOODIE: Let's get back to where we started. How much did you think you might save, after you die, by this joint title deed?

MR. FIKE: I had never tried to figure it out, but you said something about $5,000 awhile ago.

MR. MOODIE: All right. While we didn't mention it, you do have a car. Do you carry insurance on it?

MR. FIKE: Sure.

MR. MOODIE: What does that cost you each year?

MR. FIKE: Around $125.00. I carry insurance on my truck, too, and it costs even more.

MR. MOODIE: Why do you carry this insurance?

MR. FIKE: So if anything happens, the insurance company will have to pay the bills instead of my having to do it.

MR. MOODIE: The expense of administering your estate would be in a way about the same thing. You can make a will to insure that your children get what you want them to have after you folks are both gone, and you can change it any time that changing conditions make you think it should be changed. If you live ten years, and spread the expense over that time, the yearly cost would not be too much more than your insurance on your car and truck. Unless you have an accident, you get nothing but peace of mind from the insurance. You know your family will get something out of an estate plan.

MR. FIKE: All right, you've sold me. What should I do?

MR. MOODIE: Do you want to listen to some more tax talk today?

MR. FIKE: Sure, go ahead. I've got time.

MR. MOODIE: O.K., you asked me what I think you should do. Here it is. Under this same estate tax law we have been talking about, there is now a marital deduction, which means a deduction because you are married, which would make a very great difference in tax if your wife lives longer than you do. Under that provision, you can leave her, in a few words and without going into technicalities, one-half of your estate tax free upon your death.

If we take the same figures we were using awhile ago of $180,000 estate, including the life insurance, and make a will leaving her a half or more, then we would get to where you would have estate tax of about $2,500. Then when your wife dies, if she still has the property, and she may, she has another $60,000 exemption which could be deducted along with burial and administration expense, so that if she has just the same value in property when she dies, and if the law isn't changed, her estate would pay less than $2,500 in estate tax. So it is possible to protect the family and make some tax saving, in addition to possible income tax saving as I mentioned awhile ago.

MR. FIKE: Yes, but what if she got married again?

MR. MOODIE: Of course, the same thing would be true that I explained before, only it would now apply to only one-half of the estate instead of to all of it, as it would if you put it in joint title. And you want to make adequate provision for your wife, I know.

MR. FIKE: That's right. Well, I guess you better go ahead and fix up a will.

MR. MOODIE: Then I will need some detailed information. What is your wife's legal name?

MR. FIKE: Mrs. Jane Client.

MR. MOODIE: Now give me the children's names.

MR. FIKE: John R. Client, he's the oldest; then the two girls are married, one is Jane L. Roe and the other is June L. Doe.

MR. MOODIE: What about grandchildren?

MR. FIKE: John and June have no children. Jane has two, John L. Roe, Jr., and Junie.

MR. MOODIE: All right, you come back in next Tuesday and I'll have the first draft of the will ready for you to check over.

MR. FIKE: O.K. I'll be in about two o'clock.

(Applause)

CHAIRMAN CAMPBELL: Ladies and gentlemen, that concludes the prepared part of this program. We are ready now for questions, suggestions, or debate.

MR. WARNER: Mr. Chairman, I observed Mr. Hale McCown out in the audience shaking his head at one point in some of this tax talk, about the computation of the gift tax in the joint tenancy situation in the last dialogue. I think I observed what the difficulty was, but I wonder if Hale would state his objection.

HALE MCCOWN (Beatrice): It was just that I was wondering about the marital deduction, whether or not you had taken that into consideration.

CHAIRMAN CAMPBELL: That was not taken into account.

Did you ladies and gentlemen get that? In this gift tax computation the matter of the marital deducion was overlooked. That is correct. It would be substantially less than the amount stated, since this half and half gift business comes in.

JOHN R. HIGGINS (Grand Island): Can a husband give his wife $3,000 a year which she, in turn, invests in insurance or bonds, filing a gift tax return on the $3,000 that she receives. Then in the event he dies, that property is in her name, would the insurance proceeds, etc., stay out of his estate in case he dies?

CHAIRMAN CAMPBELL: If the husband gives his wife $3,000 which she invests in insurance or bonds, on her death that passes to him. Is that your question?

MR. HIGGINS: No, I am talking about what happens in the event he dies. It is not a part of his estate. Say that it is insurance on his life that she has bought with that $3,000. Every year she pays a premium of $3,000.

CHAIRMAN CAMPBELL: She invests this $3,000 each year in life insurance on the life of her husband. On his death, is that a part of his estate?

MR. MOODIE: I would say, yes.

MR. HIGGINS: Say she has filed a gift tax return each year on $3,000. It's her money. What's the difference what she does with the money?

MR. MOODIE: I think Flav Wright read a paper on that subject a couple of years ago. He's an expert along that line. I see him in the audience. Let's see what Flav says about it.

CHAIRMAN CAMPBELL: Mr. Wright.

FLAV WRIGHT: Well, I'm not an expert on it but I did give a paper on it. (Laughter) I do think that if they could trace the premiums either directly or indirectly to the husband, they would include the insurance in his estate. If she had bought bonds or something like that, it would be out of his estate. He might give her $3,000 and some time later she bought the insurance and it couldn't be directly traced to this $3,000, it *might* not get into his estate, but it would be dangerous.

MR. HIGGINS: But she has filed a gift tax return.

MR. WRIGHT: I don't think that makes any difference because the estate tax provisions say that insurance, to the extent that he has incidence of ownership, or to the extent they can trace either directly or indirectly the premiums, is included. That's my off-hand opinion.

CHAIRMAN CAMPBELL: Then, in your opinion, it would be a part of his estate, regardless of those circumstances.

MR. WRIGHT: If she took out insurance, and every year he gave her the money, even though they filed a gift tax return, they would probably throw that insurance into his estate because it could be directly or indirectly traced to him.

CHAIRMAN CAMPBELL: Is that a satisfactory answer, Mr. Higgins?

MR. HIGGINS: Yes sir.

JOHN MOORE: Here is a case of a husband and father of five children, three minors. He takes title to a piece of property which he intends to use as his homestead. He takes title in his own name and in the name of one son, an adult. The father dies. What effect does that have on the homestead interest of the widow?

CHAIRMAN CAMPBELL: Joint tenancy with this one son? The question is, A father with five children buys a home and takes it in joint tenancy with one son. On his death, how does that affect the homestead right of the widow? Are you assuming, John, that they are living on the premises?

MR. MOORE: They are living in it. It was their home.

CHAIRMAN CAMPBELL: They were living there at the time of his death.

A. J. WEAVER (Falls City): The widow's only out would be an action that she was defrauded out of her homestead right.

CHAIRMAN CAMPBELL: Mr. Weaver suggests that the only recourse would be an action for fraud on the ground that she had been defrauded out of her homestead right. The action would be against the son, is that right?

WILLIAM G. WHITFORD (Madison): What basis would there be for an action against the son? The father bought it with his money and put the title where he pleased. What fraud is there about that?

MR. MOORE: Then let me ask one more question. As the title examiner, would you insist upon a deed from that widow to cover her homestead interest?

CHAIRMAN CAMPBELL: Mr. Moore now raises the question. As the title examiner, would you insist on a quit claim deed from the widow?

WILLIAM H. HEISS (Gering): How would you know there was a widow if you just had an abstract?

CHAIRMAN CAMPBELL: As a title examiner, John, how would you know there was a widow? You have the abstract from out in Polk County showing this point tenancy.

MR. MOORE: Maybe there had been a mortgage executed during the lifetime of the husband and it would show he had a wife, so you would be on guard and ask if there was a surviving widow. It might be I would call for the death certificate, and it would show there was a surviving spouse.

ANTHONY ZALESKI (Omaha): Mr. Chairman, you can have a homestead interest in a joint estate, can't you?

MR. MOODIE: I think you would have it whether you wanted it or not, if it was the homestead.

MR. ZALESKI: That's right, whether it is tenancy in common or joint tenancy. If there is a husband and wife and the wife survives the husband, and I knew they lived in that property, I think I would examine the title more as a deed from that widow.

MR. WHITFORD: Mr. Chairman, this situation where the wife would have a homestead exemption in jointly held property, that's ordinarily where she is one of the joint tenants. Show me some authority for saying that the wife would have a homestead exemption in jointly held property which she is not going to join in. The husband's interest in that property is defeasible by his death. He is dead. The other joint tenant takes the full title. Where is there anything to carve a homestead out of?

A .C. SIDNER (Fremont): Mr. Chairman, supposing that he married after he put this property in joint tenancy with his son. Could he defeat the son's right as the other joint tenant by subsequently remarrying and establishing a homestead right?

MR. MOODIE: It is situations such as that that have never been passed on in Nebraska, and a good many other states, that are going to make good fees for lawyers arising from these joint tenancy titles. I think the Supreme Court will have an opportunity to pass on a good many of those questions. I was just afraid that some smart lawyer like John Moore would ask me some questions that I couldn't answer.

PAUL E. RHODES (Bridgeport): Is that past question settled for now?

CHAIRMAN CAMPBELL: I think so, as far as possible. It is still a question.

MR. RHODES: The statement was made that they would save on probate costs in case of death, in case of joint survivorship tenancy. Now, is that true under the present tax laws that require the property to be appraised for state inheritance taxes, federal estate taxes filed,

and requires the handling of two or three inventories instead of one? Do they actually save themselves any cost in that matter?

For instance, will the court, if you have an $800 estate in your own name and $150,000 in joint survivorship, will the court assess the costs merely against the $800 estate, handle all that court work based on an $800 estate, or based on three separate inventories that have to be handled as required by the present tax laws?

CHAIRMAN CAMPBELL: I personally don't know the answer to that. except to say that our county judge assumes that the costs are fixed on the actual probate estate. The attorneys, however, include everything in fixing our fees. I would like to hear some comment from the other fellows on that. We have discussed that with our county judge and he has discussed it with the auditors. Up to date they haven't questioned his charges based on what is actually in the probate estate.

MR. RHODES: Then the only difference would be in the amount of the court costs. The attorney's fees and whatnot would be relative to the amount of property it is actually necessary to handle, and not based upon the actual probate estate.

CHAIRMAN CAMPBELL: I think that is correct. However, in this skit that was given as the client's idea of why he wanted it.

MR. RHODES: Well, that was what I was wondering, if you could tell your client that he actually didn't save anything except maybe a minor fee in court.

CHAIRMAN CAMPBELL: I think that came out, at least partially, in Mr. Fike's statement, that there would be very little saving by putting this one item in joint tenancy and having the rest of it in the estate.

O. L. CLARKE (Beatrice): I think the law is very clear that the court costs must be based only on the probate estate. But attorney's fees are costs or expenses of the administration and are allowable as an expense of the administrator; but the administrator's fees are based upon the probated estate, with extraordinary fees allowed for extraordinary services. If he must go with the attorney to Omaha to attend a meeting with the federal people, of course his fees will go up. I think we find generally that the attorney's fees where the bulk of the estate is in joint tenancy will practically equal what the fee would have been had it been in the probated estate, because the difficulties occasioned by the joint tenancy in filing the federal returns and in getting inheritance tax clearance and in establishing the contributions by the surviving spouse are so much more complicated that he finds he has spent more hours on the job than he would have spent had it been in the estate.

I think over the past four or five years we have found that fees of attorneys are higher and it is coming to be the thing to advise the client of that fact, that it doesn't make much difference to the attorney

whether he handles it on joint tenancy or the estate basis; his fees will be about equal. (Applause)

CHAIRMAN CAMPBELL: Thank you, Judge.

WILLIAM G. WHITFORD (Madison): Mr. Chairman, I have no quarrel with the attorney fee being based on that including jointly held property in an ordinary situation, but suppose you have this situation. Suppose that the jointly held property goes to different people than the assets of the estate proper, and suppose the jointly held property is vastly larger than the illustration you put? Then where are these fees going to come from?

We actually had that situation. The man died. He had a half-cousin and a widow. He died intestate. There was $60,000 worth of jointly held property with the widow, and then $40,000 in his name in which this half-cousin had half. Now, where is the fee going to come from if it is based on a $100,000 estate. Is it fair for the guy who is getting only two-fifths to pay half of the fee? It could be much worse. The fraction could be much smaller. Suppose it was $90,000 in joint tenancy and then $10,000 divided between the two:

CHAIRMAN CAMPBELL: I think we have a contribution statute in Nebraska with particular reference to federal estate tax. I don't know whether that is broad enough to reach your situation or not.

MR. MOODIE: Maybe it should be amended to include attorney fees. (Laughter)

CHARLES LEDWITH (Lincoln): Mr. Warner discussed the presumption arising under the Crowell v. Milligan that half of all the funds deposited in a joint bank account are presumed to belong to the non-contributing joint tenant of the account. I would like to ask him if he would regard as effective in overcoming that presumption a signature card taken by the bank in which it is stated that the joint tenant is named for the purpose only of permitting him to withdraw funds, but that the funds are not intended to be given half to the joint tenant.

CHAIRMAN CAMPBELL: Mr. Warner.

MR. WARNER: I think in that situation that the joint tenant wouldn't have very much interest in that bank account. From that language on the signature card I believe it would be clearly evident that the contributing joint tenant intended only to make a gift to the surviving joint tenant in case he was survived, and if that was true there would be clearly a testamentary disposition. It is not made in accordance with the Statute of Wills.

CHAIRMAN CAMPBELL: Mr. Ledwith, your situation as I understand it would be a payable on death account rather than a strict joint account.

MR. LEDWITH: And would also be a power of attorney to another to draw during lifetime. It would be a combination, but it would be

an attempt by signature card to negative the intention of a present gift to the joint tenant.

CHAIRMAN CAMPBELL: Sort of a payable on death and joint under certain circumstances signature card.

MR. WARNER: There is a case which involves a situation that I believe would be analogous to that, Charlie, that is fairly recent, in which the owner of the money went to the banker and told him, "I want to fix this account so it will be payable (I don't remember whether it was his wife or somebody else) upon my death," and acting upon those instructions the banker made an entry on the records of the bank, "Name of So-and-So, payable on death to somebody else." That case got up to the supreme court and the supreme court held it was purely testamentary in nature and that the person designated as beneficiary upon death had no interest in the account.

I think your situation in which it is clearly the intention of the creator of the account to give nothing except in the case of death, beyond a power to draw on the account, would be testamentary in nature, too.

ROY E. BLIXT (Arnold): If A and B are in busines, partnership arrangement, and they are maintaining a bank account, how could you prevent the incidence of joint tenancy attaching to that bank account?

MR. FIKE: I think that is just a straight partnership account. It would be so opened up in the bank and it would be established that it was a partnership account.

MR. BLIXT: In other words, it should be in the partnership name rather than in the name of the two partners.

MR. FIKE: The bank will open an account for a corporation or for a partnership, and they will require resolutions from the corporation, and if it is a partnership they look into that and get some information on the partnership as to who the partners are, or if there are two people wanting a straight joint tenancy account, they will open the account that way and identify it that way.

HOWARD DAVIS (Plattsmouth): We have discussed what type of advice to give a client when he comes in asking whether or not he should put his property in joint tenancy, and that has been covered very nicely. My question is, Supposing he comes in and says, "A few years back my attorney advised me to put all my property in joint tenancy. I now understand that I have put myself in a bad tax situation and I want to change it back to my personal name." What do we get into there tax-wise?

CHAIRMAN CAMPBELL: Did Mr. Wright leave the room?

MR. MOODIE: You get into more gifts and gift tax liability. However, there is a partial solution. In some instances the facts will lend themselves to a partial solution by trading between the husband and

wife interests held in this jointly owned property so that when they wind up each one of them will have property in their own names.

MR. DAVIS: Is that the right way, then, to get the property back into the individual names of the husband and wife, assuming that you don't want it all in one person's name?

MR. MOODIE: I think it is. At least you have no additional gift tax liability by doing that.

MR. DAVIS: By change of deeds.

MR. MOODIE: Yes.

THOMAS M. DAVIES (Lincoln): Mr. Chairman, I would also recommend putting it into tenancy in common. You have no further gift tax problem there. You do have a federal case, Sullivan's Estate v. Commissioner to protect you on that.

MR. MOODIE: That's right.

ANTHONY ZALESKI (Omaha): Mr. Chairman, assume that a person puts with her name the name of her daughter in a joint account. She has a second husband and six children. She says to the daughter, "On my death I want you to divide this property seven ways equally. We know that under the statute, as far as the banking concern is involved, that the bank is free and safe to pay that money to the surviving daughter. But let's assume that the daughter would refuse to follow the instructions of her mother and divide that money seven ways. Wouldn't she be, as far as the parties themselves are concerned, merely a trustee, and wouldn't she be liable to a suit if that were the fact?

CHAIRMAN CAMPBELL: You are assuming that this agreement and instruction from the mother could be proved?

MR. ZALESKI: Yes. Then that daughter, in my opinion, would be simply the trustee for an equal division of that property if the facts could be proven, notwithstanding the joint account.

MR. MOODIE: That is very probably true. The funds in the hands of the survivor might be impressed for the trust.

CHAIRMAN CAMPBELL: I bumped against that very recently except that the instructions could not be proven. The daughter who had it said "Mom to give Wendy $100 and divide the rest of it equally." They couldn't prove anything differently. That's what you get into.

EARL J. LEE (Fremont): Mr. Chairman, we haven't explored one proposition here. When those folks come into Lawyer Moodie's office —those fellows from our county go up there—and he draws up that joint tenancy deed on that $11,000 house, do we owe a duty to those folks to call their attention, if the husband and wife want to direct where that property should go in the event of the death of the survivor, to the fact that they should each make a will? I wonder if we shouldn't cover that, too, in our conversations with these folks?

MR. MOODIE: I think you are right, Earl.

MR. LEE: Because a lot of them perhaps don't realize that. They may want it to go to one certain child, or if they don't have children they want it to go in a certain manner. So don't we owe a duty to bring that out?

The reason I arose is this. That brochure that was published by the Bar Association is quite helpful. I maintain a supply, and occasionally when people ask me about this and they don't believe me, I give them the brochure that is put out by the authorities, the fellows who know. But I wonder if that shouldn't now be revised to cover the case of Crowell v. Milligan which is going to be very helpful to the lawyers.

MR. MOODIE: I think perhaps it should, Earl.

MR. LEE: I think we ought to show them some of the vices of these joint bank accounts, because as we know, the bankers are protected, as well as the Building & Loans. We haven't covered the Building & Loans, but I think the same thing would apply if I had a $5,000 certificate in the Building & Loan in joint tenancy and then I should draw it out and put it in my own name. But it is the ultimate disposition of the money that the people don't understand. So I think the brochure should be amended to cover that.

CHAIRMAN CAMPBELL: I think your point is well taken, Mr. Lee. In our practice we always call their attention to the fact that this is not a final disposition; it just relates between you two people and what you want to happen with it after the last one of you is gone.

WALTER G. HUBER (Blair): We haven't discussed a matter here that I think is related, and that is the matter of meeting joint tenancy in your office with regard to automobiles. I think perhaps that could be incorporated in this pamphlet.

What I had in mind is, if the spouse is injured, she owns the car, then the matter of contributory negligence comes up so far as the husband, and that immediately has a chance to snuff out her lawsuit.

Another point, as far as incorporating, I think we have something on these small estates and that is when the spouse applies for old age assistance and receives it, that that severs the joint tenancy, and many of them will be unaware of it unless wills are made to cover that.

CHAIRMAN CAMPBELL: That is well taken.

ROBERT J. SWANSON (Stanton): Mr. Chairman, I would like to get a little advice from Mr. Wright. He spoke of the purchase of life insurance by the wife to provide for the payment of taxes in the husband's estate. I wonder if Mr. Wright has any recommendation as to devices whereby the husband can put property in the wife's name by which she can buy life insurance, or otherwise provide other funds with which to pay his federal estate taxes without having those funds kept in the estate?

CHAIRMAN CAMPBELL: Mr. Wright.

MR. WRIGHT: I think it can be done, but don't set up a situation where it is apparent as soon as you do it that that is the purpose of it. If you give a wife a farm or income property and later she decides it would be a good idea to have insurance on her husband's life, she takes it out herself and has all the incidence of ownership, and she uses the income from the farm to pay the premiums, you would probably be all right on it; but you certainly wouldn't be all right on it if every year when the premium came due she would have the husband make a gift to her in the amount of the premium and then go pay for the life insurance with it.

GEORGE A. SKULTETY (Fairbury): Let's assume a man has an $80,000 estate all in joint tenancy—real estate, bank account, and bonds, all in joint tenancy, an $80,000 estate. It is appraised in the county court for inheritance tax. The widow pays a funeral bill of $1,000 or more. He leaves a $3,000 note at the bank which the widow pays. There is a substantial attorney fee for the federal estate tax return and the appraisement in the county court. Can any of those items be deducted from the gross value of the estate in appraising it in the county court.

MR. MOODIE: I think not, sir.

CHAIRMAN CAMPBELL: Maybe the county judges know the answer to that. Judge Clarke.

JUDGE CLARKE: It is a serious problem. We have adopted a rule of convenience, I might say. Take it for what it is worth.

If the widow has no other property in her own name, we will allow her to deduct the funeral bills, the expenses of the last illness, more or less by agreement between the county attorney and the court. We allow her to go that far, but we will not go to these contributions to creditors, and we will not allow her to claim any exemptions or deductions. But I don't think we are legally right in allowing her even the funeral bill, but we have done that. However, if she owns property in her own name prior to the death of her husband, she has an estate of her own with which to pay those bills. That is the rule which we have followed. It is merely a rule of convenience.

CHAIRMAN CAMPBELL: Do you know, Judge, whether or not that has been tried out with the federal estate tax.

JUDGE CLARKE: No. I might refer you to the Redfield Work Sheet which is being published now—the first copies were off the press this past week. In that Work Sheet the expenses, debts, etc., on page one are all deductible from the sole estate of the deceased. The items of joint tenancy, there is no place to put them in on the joint tenancy side. I believe that is the law. But we will never allow these notes at the bank. If the bank is fool enough to loan her the money, they're stuck; if she is fool enough to pay it off, it's her fault.

MR. MOODIE: May I call attention to the fact that at the Tax Institue which is to be held in December, a lot of these tax problems are going to be discussed and answered. The Institute is going to be somewhat different this year from what it has been in other years. There will be three two-day sessions, as the sign here indicates—two days at Scottsbluff, two days at Kearney, and two days at Omaha. There is a very fine panel selected for that Tax Institute, and I recommend that if you are interested in these tax matters by all means attend the Tax Institute this year. It will be an important meeting.

SECTION ON ADMINISTRATIVE AND LABOR LAW

Hird Stryker

Chairman

"THE EMPLOYER'S INTRODUCTION TO A UNION"

A PANEL DISCUSSION

Moderator
HIRD STRYKER, ESQ.
Chairman of the Section

Members of the Panel
HARRY R. HENATSCH, ESQ.
Omaha, Nebraska
JOHN E. NORTH, ESQ.
Omaha, Nebraska
DAVID W. SWARR, ESQ.
Omaha, Nebraska

The speakers on the program of this section did not submit papers for publication.

JUNIOR BAR SECTION

Nate Holman

Chairman

"CIVIL PROCEDURE IN THE FEDERAL COURTS".....JOSEPH T. VOTAVA, ESQ.
Former U. S. District Attorney
Past President Nebraska State Bar Association

The speaker on the program of this section did not submit a paper for publication.

FRIDAY AFTERNOON SESSION

November 13, 1953

The Friday afternoon session of the Nebraska State Bar Association was called to order at one-forty o'clock by Vice-President John J. Wilson of Lincoln.

CHAIRMAN WILSON: The convention will come to order.

We will first have the report of the Section on Administrative and Labor Law by Hird Stryker, Chairman.

REPORT OF SECTION ON ADMINISTRATIVE AND LABOR LAW

Hird Stryker

At the end of its labors the Section brought forth, or I should say, gave birth to a new Chairman and Secretary. The new Chairman of the Section is John E. North, and Edson Smith is the Secretary.

CHAIRMAN WILSON: Our next report will be from the Section on Insurance Law, Charles Nye, Chairman. Is Mr. Nye present? We will pass that one for the moment, then.

The Section on Municipal Law, John Keriakedes, Chairman.

REPORT OF SECTION ON MUNICIPAL LAW

John F. Keriakedes

It is with great pleasure that I address you all on this momentous occasion. It seems that I was chosen as the pallbearer for the Section on Municipal Law, the powers that be having decided to eliminate the Section this year. So I am unable to announce the election of any new officers.

We had a very interesting meeting, with a most instructive discourse by Bill Nuernberger on the problems incident to revising municipal codes. And Jack Pace of the City Attorney's office in Lincoln gave a very interesting discussion of the day-to-day problems that confront the city attorney.

I am sorry, in view of the finality of this report, that I am not physically equipped to do the "dying swan" act for you, but this is the swan song of the Municipal Law Section.

CHAIRMAN WILSON: Thank you, John.

I see that Mr. Nye has come in. We will have the report of the Section on Insurance Law.

REPORT OF SECTION ON INSURANCE LAW

Charles A. Nye

The Insurance Section is continuing next year, gentlemen. The Chairman will be Dwight C. Perkins of Lincoln, and the new Secretary is Jesse Cranny of Omaha.

We had a full program yesterday afternon, and I think it was a reasonably interesting one. It was dedicated to the significance of automobiles in our present day litigation and included, as you know, three different phases, including the automobile policy, the matter of settlement negotiations, and a look into the trends of the future.

One thing I would like to mention is that quite a number of men have come around and expressed commendation for the program. Whether they thought it was good or whether they thought it was bad is not too significant, but I think sometimes we fail to realize that a tremendous amount of work goes into these programs in preparation for the annual convention, and I think the policy of expressing appreciation to the various men who have participated is an excellent one and probably should lead to a freer participation in these various programs.

CHAIRMAN WILSON: Thank you, Mr. Nye.

Next will be the report of the Section on Real Estate and Probate Law, Phil Campbell, Chairman.

REPORT OF SECTION ON REAL ESTATE AND PROBATE LAW

Phil B. Campbell

Mr. Chairman, Ladies and Gentlemen: With the prospect of this Section being divided next year, we did something that has not been done for some time, and that was to elect a Chairman and Vice-Chairman.

The Chairman is John R. Fike of Omaha, Vice-Chairman, David R. Warner of Dakota City, and Secretary Clem Peterson of Omaha.

I think we had a very interesting discussion here this morning with the room pretty well filled. We who helped to work it out were very gratified with the attendance and the reception. There were some very interesting questions raised on the matter of joint tenancy. One suggestion that I heard before the meeting, but was not offered at the meeting, might be the most sensible suggestion, and that was to have the legislature do away with joint tenancy in Nebraska.

CHAIRMAN WILSON: Thank you, Mr. Campbell.

Now the report on the Junior Bar Section, Nate Holman, Chairman.

REPORT OF JUNIOR BAR SECTION

Nate Holman

Mr. Chairman, Ladies and Gentlemen: I have been assured that the stop watch might not stop me at exactly two minutes, as I was instructed by mail earlier this week, so with your permission, since there wasn't a written report in the preliminary program, I would like to make the following report with respect to the activities of the Junior Bar this past year.

This year we have completed an exceptionally ambitious program, inasmuch as we took on the activities, along with the Public Relations Committee, of the broadcasts "You And The Law" which many of you heard in your various communities throughout the state. This consisted of fifteen-minute recorded programs which the Bar Association purchased. They were dramatic depictions of situations in which the average layman should contact or have some relationships with his attorney, and which were designed primarily, of course, to improve the public relations of the Bar with the public. This activity was taken on by the Junior Bar Association and is still being carried on, obtaining permission from the local radio stations to play the series as a public service. Any of you who are interested in having them in your community, please contact either George Turner or the new Chairman of the Junior Bar Section, who will be delighted to have these programs at your disposal.

During the Missouri Valley Regional Meeting of the Amercian Bar Association, in cooperation with the Barrister's Club in Omaha, the Junior Bar sponsored a program of a Clinic, a luncheon, and as you who attended remember, a dance in the evening. I wish to thank the members of the Omaha Bar Association, particularly the Omaha Barrister's Club, for their cooperation in that fine meeting.

For several years it has been the hope of the members of this Section to conduct a Clinic or Institute for the purpose of enlightening the members of the Junior Bar on subjects of particular interest to the young lawyer. This year an Institute on "The Use of Demonstrative Evidence" was held in Lincoln on September 18 and 19 at the University of Nebraska School of Law. This two-day session was attended by 250 lawyers of all ages in the State of Nebraska. An able team consisting of Professor David Dow of the faculty of the Law School, Robert D. Mullin of Omaha, and George Healey of Lincoln demonstrated outstanding modern trial techniques. This trial and panel discussion were presided over by the Honorable John H. Kuns, District Judge from Kimball. With the help of Charles Edholm, a professional photographer, and Dr. Dwight Cherry, a surgeon, both of Lincoln, a professional and outstanding program was presented.

We wish at this time to publicly thank the members of the senior Bar Association, the Nebraska State Bar Association, and the Secretary, particularly, and the Lincoln Bar Association for their cooperation and very generous help in connection with this Institute.

We recommend that the Institute, or Clinic, as it may be called, on the part of the Junior Bar be adopted as an annual undertaking with the cooperation of the members of the senior Bar Association.

The Junior Bar Section has agreed to actively participate in efforts necessary to obtain sufficient signatures on the petitions recommended

by the report of the Committee on the Judiciary to this session to place the proposed change in the method of selection of Judges before the electors of Nebraska.

In that connection, gentlemen, it was the opinion this morning of the members of the Junior Bar Association that the organizational activities should not be taken over by them, for this reason: If there is any difficulty at all with newspaper publicity or with reaction as it possibly could be, it would be better to have the guidance, and particularly the influence of the senior Bar as much as possible. We will give you all the help we can in the leg work involved. I am sure that you will recognize that the responsibilities of the thing belong to the entire Bar, but we want to help all we can. We have, for that reason, consented and agreed to participate in this activity enthusiastically to obtain the signatures necessary to make the change.

I will report at this time the election of the new officers in the Section. The Chairman is Dean Wallace, formerly of Kearney, now of Omaha. The Chairman-Elect is Albert Schatz of Omaha. The Secretary is Hugh Stuart of Lexington. We have appointed four Vice-Chairmen, one from each congressional district. They are: Richard Proud of Arapahoe for District No. 1; Tyler Gaines of Omaha for District No. 2; Raymond Simmons of Fremont for District No. 3; and Kenneth Elson of Grand Island for District No. 4.

In addition, the Executive Committee will also be composed of past Chairmen Robert D. McNutt of Lincoln, Milton A. Mills of Osceola, Richard E. Hunter of Hastings, and your retiring Chairman, Nate Holman of Lincoln.

I wish to express to the President and the Executive Committee of the Nebraska State Bar Association, and particularly to Mr. Turner and Mr. John J. Wilson, our coordinator, our appreciation for their cooperation during the past year. I thank you.

PRESIDENT WILLIAMS: (In the Chair). Was there any affirmative recommendation, Mr. Holman? I am sorry that I was not in the room.

MR. HOLMAN: Only that we be permitted to carry on future Institutes.

PRESIDENT WILLIAMS: I assume that will be accomplished without formal motion. Thank you very much.

Next we have the pleasure of receiving a report on behalf of the Student Bar Association of the School of Law at the Creighton University, which this year won the American Bar Association's annual award as the most outstanding Student Bar Association in any Law School in America. A great honor to a very fine law school!

At this time I present to you Mr. William B. Woodruff, senior law student, the Creighton University. Mr. Woodruff!

REPORT OF THE CREIGHTON UNIVERSITY STUDENT BAR ASSOCIATION

William B. Woodruff

Thank you very much, Mr. Williams. The members of the Creighton Student Bar during its second year received a great incentive to increase their accomplishments when they were honored by being presented with an award as an outstanding student bar in the American Law Student Association for the year 1952.

Improvements were made in all phases of the Bar Association activities. To the normal intra-school news in "Assault And Flattery," the official news organ of the bar, were added a section in which there appeared each week a legal ethics situation for the students to interpret and a section containing a syllabus of the outstanding legal case of the week.

The Speech Club sponsored a series of orientation talks designed to acquaint the freshmen and other new students with the law school and what would be expected of them. An introduction to the use of the law library was given. The John Carroll Speech Club is an organization established to fill the need for an opportunity for the students to develop the poise and self-confidence before an audience so greatly needed by the lawyer. The members give various extemporaneous and prepared speeches to the student body and to outside organizations.

The Student Welfare Committee, composed of one representative from each class, was organized as the liaison medium between the students and the school administrators. It is the duty of the committee to receive and evaluate any suggestions of the students, submit them to the student body for vote, and present them to the Dean. Several improvements were made by using this procedure.

The Speakers Committee brought many outstanding speakers to the student bar meetings who were able to give the students a broad view of the law graduate's opportunities and an understanding of the many current problems which will face them both as lawyers and as citizens.

The wives of the law students, not to be outdone, formed their own organization which held regularly scheduled meetings and participated in various public service activities.

In addition to the Legal Aid Clinic, which is not sponsored by the student bar, the students established a Legal Research Committee which accepted questions from practicing attorneys who did not have access to an adequate law library. The committee did thorough research on the questions, using accurate legal writing methods, and, after a check by a faculty advisor, the findings were returned. The response

to this service was so favorable that this year it has been integrated into the school curriculum.

The Pre-Legal Club was organized to give the undergraduate students of Omaha an opportunity to become acquainted with the study of law. The group was sponsored by the student bar but was directed by its own membership. The students had the opportunity to hear various speakers in the field of law, and publish their own Newsletter for the information of all pre-law students in Omaha.

Among the public service activities of the student bar was the television skit given on KMTV's "Door of Knowledge." The students and professors who participated in the program enacted the commission of a crime and the operation of the processes of law in action. The viewers were shown the necessity for rigid rules in the dissemination of justice and how a jury functions.

In May of last year, Creighton became the host to the Eighth Circuit American Law Student Association convention which was held in connection with the Missouri Valley Regional Convention of the A.B.A. It was here that a Creighton student bar member, Lee Bloomingdale, was named Vice-President in Charge of the Eighth Circuit. The President of the Creighton Student Bar, Dan Egan, received an award as an outstanding national chairman of the American Law Student Association at the national convention held in Boston.

These are but the highlights of the activities which were accomplished by the students under their own initiative and planning. The culmination of the efforts of the student bar was the plaque presented to the Creighton Student Bar by the American Law Student Association naming it THE MOST OUTSTANDING MEMBER STUDENT BAR ASSOCIATION IN THE UNITED STATES. We of the Creighton University Law School feel very honored to have received this recognition and look forward to an even more active year in our new Associate Membership with the Nebraska Bar Association. (Applause)

PRESIDENT WILLIAMS: Thank you, Mr. Woodruff.

May I say on behalf of the Nebraska State Bar Association that now that we have a Law Student membership, we shall welcome to membership in this Association the law students of both of our very fine law schools in this state. We look forward to an enlargement of the opportunities for service to law students, which we hope already exists. Vice versa, we look forward to an enrichening of our activities by reason of your participation in our affairs. We particularly hope that this will mean that law students will have an increased interest in and knowledge of the workings of the organized bar, and will develop such interest in the early days of their legal training.

Next, ladies and gentlemen, the report of the Advisory Committee, Mr. Raymond G. Young, Chairman. Mr. Young!

REPORT OF ADVISORY COMMITTEE

RAYMOND G. YOUNG: Mr. President and Gentlemen: Dealing with so many local committees—there are eighteen of them—it is not practicable to assemble the data in time to permit of the printing of our annual report in the advance program. The report is not very long. It contains figures and statistics which are important and which I think will be interesting to you. I want to read to you portions of the report.

In 1953 the Advisory Committee reviewed the records in three cases, one of which it dismissed. The other two were reported to the Court, and one of them resulted in disbarment, and in the other a referee has been appointed to take testimony. The Committee has received, as required by the Rules, and has considered applications for reinstatement in two cases. The Committee has made a reference in one case in which the chairman of the local committee was disqualified, and has rendered two advisory opinions. The work of the Advisory Committee is up to date, except for its continuous supervision of cases referred by it to District Committees.

In seven of the eighteen Districts, no charges were made in 1953 and no matters are pending. These are Districts 1, 2, 5, 8, 10, 14, and 18.

During the year minor matters have been adjusted satisfactorily without formal hearing as follows: Three in District 3 (Lincoln), three in District 4 (Omaha), and one each in Districts 7 and 16. After investigation, informal charges have been dismissed for lack of merit in two cases in District 15, and one each in Districts 3, 9, 16, and 17. There are now under investigation by District Committees two matters in District 4, and one each in Districts 6, 12, and 13.

The Nebraska Bar became integrated January 1, 1938. For the last sixteen years integration has been effective and the disciplinary machinery which was set up by the appointment of the Advisory Committee and of District Committees of Inquiry has functioned under Supreme Court Rules which, from time to time, have been amended and improved, sometimes by the Court on its own motion, and in other cases at the request of this Association.

In fourteen of those sixteen years there have been no complaints and no matters requiring investigation in District 1 (Johnson, Nemaha, Pawnee, and Richardson Counties) and in District 18 (Gage and Jefferson Counties); in twelve of those years in District 14 (Chase, Dundy, Frontier, Furnas, Gosper, Hayes, Hitchcock, Perkins, and Red Willow Counties); in eleven years in District 12 (Buffalo, Custer, Logan, and Sherman Counties); and in ten years in District 5 (Hamilton, Polk, Butler, Saunders, Seward, and York Counties). In nine of the sixteen years there have been no complaints and no charges requiring investigation in Districts 6, 8, and 10.

There are several Districts in which no charges have ever been made except such as were found upon investigation to be without merit, or were easily adjusted without the necessity of a formal hearing.

I wish you would get this: In the sixteen-year period disciplinary proceedings have been filed in the Supreme Court in twenty-eight cases, with the following results: one reprimand; one suspension; four dismissals; twenty disbarments; two cases pending.

Presently there are fifty-eight members of District Committees and seven members of the Advisory Committee. One hundred thirty-four representative lawyers selected as such by the Supreme Court from all parts of the state, have served on a District Committee or on the Advisory Committee. In every community of the state any member of this Association has, or can have, immediate contact with the ethical and disciplinary processes of the Association and the Supreme Court in any matter which may require information as to procedure, or the investigation of questionable practices, or the filing of charges, or the rendition of an advisory opinion; and the disciplinary machinery of the Association is at all times available to any member of the public who may feel himself to be aggrieved.

It should be remembered that the Supreme Court has, as we think it should have, complete ultimate authority and control over disciplinary matters, and that the Committees of Inquiry and the Advisory Committee are its agencies; that in every case the advisory Committee analyzes and studies the record and the evidence, makes its report and states its conclusions and its reasons for them to the Supreme Court, which may accept the report and the conclusions, or, notwithstanding the report it may send the case to the Attorney General or to any other attorney appointed by the Court to investigate or to prosecute, or, it may appoint, as it has sometimes done, a referee to take testimony and make an independent investigation and report.

The Advisory Committee acknowledges with thanks the courtesy of the Association in providing each member of the Committee with a copy of the excellent recent book on *Legal Ethics* by Henry S. Drinker.

Each member of the Committee, I might say, has access to and makes frequent use of the opinions of the American Bar Association Committee on Professional Ethics and Grievances.

It is the belief of the Advisory Committee that no other profession has been so exacting in requiring the adherence of its members to high moral and ethical standards, and that none has been more vigilant in eliminating those who have proved unworthy and in protecting all its members from unjustified charges and unfounded complaints.

One of the finest features of our system is this: That until a matter has been investigated by the local Committee, until the hearing has been had, the decision rendered, a complaint prepared, and until the complaint and record have been analyzed by the Advisory Committee

and transmitted with its conclusions to the Clerk of the Supreme Court for filing—until that point is reached, there is no publicity and the respondent is not deemed to have been complained against. That has saved the reputation and the career of excellent lawyers and good men who have committed no offense more reprehensible than that of winning a lawsuit or a controversy to the discomfiture of their adversaries.

The Advisory Committee renews its recommendation that this Association at its expense cause to be placed in each County Law Library in the state, in each Law School Library, in the State Library, and with the Chairman of each District Committee of Inquiry a copy of the latest bound volume and of the supplements to date containing all opinions of the American Bar Association Committee on Professional Ethics and Grievances.

I move the adoption of the report.

PRESIDENT WILLIAMS: You have heard the motion. Is there a second?

RAYMOND M. CROSSMAN (Omaha): I second the motion.

PRESIDENT WILLIAMS: Is there any discussion? If not, are you ready for the question? Those in favor signify by saying "aye"; those opposed, same sign. It is unanimously carried and so ordered.

PRESIDENT WILLIAMS: The report of the Committee on Budget and Finance, Mr. Joseph T. Votava, Chairman. Mr. Votava!

JOSEPH T. VOTAVA: Mr. President, the report of the committee is printed on Page 47. The object for which the committee was appointed has been accomplished, and it would serve no useful purpose to make a long report.

I am challenging your attention to the last paragraph of the report which, without my knowledge, is heavy typed and emphasized. Apparently the editor of the program deemed it proper to emphasize the suggestions made therein. The suggestion is merely made as a red flag to the incoming officers that the funds of the Association, even with the increased dues, will not be unlimited. We may anticipate a good many active members, because of the increase in dues, to become inactive members.

Yesterday you heard of the large number of lawyers who left the profession by a natural way. Mr. Young was reading the number of lawyers who have left the profession in an artificial fashion. We may never have any more lawyers in this state than we now have. It will do no harm to build up a reserve fund, and so the warning in the last paragraph of our report.

Mr. President, I move the adoption of the report.

PRESIDENT WILLIAMS: Is there a second?

PHIL B. CAMPBELL (Osceola): I second the motion.

PRESIDENT WILLIAMS: Is there any discussion?

On behalf of the Executive Council and the Officers, may I express our very deep appreciation to Mr. Votava and this committee for the remarkable job they did for us this year.

All those in favor of the motion signify by saying "aye"; those opposed, same sign. It is unanimously carried.

REPORT OF THE COMMITTEE ON BUDGET AND FINANCE

Your Committee respectfully reports:

The members of this Committe upon notice of their appointment realized that their duties were not to be merely honorary; those who might have entertained any such thoughts were quickly disillusioned after a conference with the Executive Officers. It appeared that with our present activities, the Association was operating on a deficit in excess of $1,000.00 annually. This was the case in spite of the fact that meetings of appointed committees were not encouraged, because traveling funds were not available.

Article VI, Section 10 of our Rules provides:

> "The traveling and other expenses incurred by any committee, standing or special, for meetings of each committee or otherwise, during the interval between annual meetings of the Association, shall be paid by the Treasurer out of such appropriation as the Executive Council shall have made on application in each case in advance of its expenditure. Such application shall be made in writing by the Chairman of each committee within sixty (60) days after his appointment and upon a specific budget."

Your committee found that this Rule was almost wholly ignored. However, no harm was occasioned thereby. Committee meetings were held, members incurred traveling and other expenses, but in almost all cases no claims were submitted and no reimbursements were made. Committee members gave their time, their services and paid their own expenses. What has been said is also true of expenses of members of the Executive Council and of the Officers.

At our first meeting the question of expanding the activities of the association was considered. We knew that there was a growing demand among the members for a Public Relations Program.

Our preliminary study convinced us that an increase in dues was mandatory. The question was how high they should be raised. We realized that the final decision would rest with the Supreme Court. We also realized that the Court would want to know the attitude of the Bar. Likewise the Committee knew that both the Bar and the Court would demand facts, so they could act intelligently.

Your committee therefore decided to get this information, and thereafter have a meeting later in the year to make a recommendation to the Executive Council.

In the interim, each committee member was to, (and did) give the subject all possible study. He also was to ascertain what the lawyers in his community wanted, and what they were willing to pay for what they wanted.

We obtained reports from all of the Bar Associations in the country and also reports on the dues of other professional and other associations. After all of the necessary information was obtained, a meeting of the Committee was held on May 2, 1953. (This was following the Missouri Valley Regional Meeting. We wanted as large an attendance as possible and save expenses as every one traveled on his own). Thirteen of the twenty-four members of the Committee were present. There were present all of the Officers of the Association and all the members of the Executive Council; also the Chairman of the Public Relations Committee and the Chairman of the Committee on American Citizenship. We spent all afternoon discussing the financial affairs of the association and it was apparent that without raising the dues, some of our present activities would have to be curtailed.

We found that practically every State Association during the last three years increased its dues and in some states the dues are as high as $25 per year. In others they are $20 per year and in many $15.00. However, in those states where the dues are $15 or less, it is the general practice to charge registration fees to their institutes and to their annual meetings. These are free to our members. The Doctors in our state pay annual dues of $35 per year. Besides, every so often, they have special assessments.

After studying all the available information, it was thereupon resolved and unanimously carried that the Executive Council be informed that it is the careful and considered view of the Committee that the Supreme Court be requested to increase the dues from $10 to $20 per Adult Member, from $5 to $10 per Junior Member and $2 to $5 for Inactive Members. The Executive Council was further requested to take immediate steps so that such additional dues would be in effect beginning January 1, 1954.

It was your Committee's opinion that by raising the dues as recommended, our association could continue our present activities and also put on a Public Relations Program.

The Executive Council acted favorably on our recommendation, and submitted the problem to the Supreme Court. As was anticipated, the Court requested that the views of the Bar be ascertained by a referendum. This was done; when submitting the question, the Council accompanied it with a detailed factual exposition of the case. At the request of the Officers, your Committee likewise, through the Secretary, sent to each member a circular letter giving its reasons (and the facts) for its recommendation. In this recommendation all the mem-

bers of committee joined. (Those who were absent at the May 2nd meeting were contacted and every one gave his approval).

That the Committee properly interpreted the wishes of the Bar was reflected in the vote; 1011 voted for, and 515 against. Every county cast a majority in favor of the increase as recommended.

When the vote of the Bar was reported to the Supreme Court, the Court after careful consideration amended our Rules, raising the dues as recommended by your committee. That Rule is now in force.

Your committee feels that by this action of the Bar and of the Supreme Court our Association has taken place among the progressive and enterprising Bar Associations of our country.

Before closing this report your Committee desires to make one suggestion to the Executive Council and to the officers to be selected. At the beginning of this report, we quoted a Rule of this association which heretofore has been somewhat disregarded. This should not be permitted. The Rule requires budgeting of funds, and this includes setting aside a sum for traveling expenses of Committee members. Such a sum should be so budgeted and committee members should be reimbursed. To carry out this Rule will likely entail upon the officers a reduction in the number of committees and of component members Committee membership should not be honorary. No more committees should be appointed than are necessary; the membership should be limited, and should be restricted as much as possible to working members.

JOSEPH T. VOTAVA, *Chairman*
ROBERT H. BEATTY
LOWELL A. DAVIS
HARRY J. FARNHAM
MILES N. LEE
ANDREW D. MAPES
WILLIAM S. PADLEY
FRED H. RICHARDS, JR.
LEON SAMUELSON
VARRO E. TYLER
R. R. WELLINGTON
FRANK D. WILLIAMS
C. J. CAMPBELL
GEORGE L. DELACY
CLARENCE E. HALEY
VANCE E. LEININGER
FRED S. MARTIN
WILLIAM B. QUIGLEY
DONALD F. SAMPSON
DANIEL STUBBS
EDWARD L. VOGELTANZ

CARL E. WILLARD
M. H. WORLOCK

PRESIDENT WILLIAMS: Is there any discussion? Are you ready for the question? All those in favor say "aye"; those opposed, same sign. It is unanimously adopted.

REPORT OF THE SPECIAL COMMITTEE ON JOINT CONFERENCE OF LAWYERS AND ACCOUNTANTS

Early in 1951 the American Bar Association and the American Institute of Accountants adopted a revised Joint Statement of Principles in the field of income taxation as recommended by the National Conference of Lawyers and Certified Public Accountants.

In the conclusion to this Joint Statement appeared the following:

> "It is recommended that joint committees representing the local societies of both professions be established. Such committees might well take permanent form as local conferences of lawyers and accountants patterned after this conference * * *."

In accordance with this suggestion a Special Committee of this Association was appointed which together with a like Committee of the Nebraska Society of Certified Public Accountants approved the Joint Statement of the National Conference, extended its principles to the preparation of federal estate and gift tax returns, and recommended a permanent Joint Conference of our two State Associations of five members from each group.

This recommendation was adopted at the annual meeting of our Association in November, 1951, with the following reference to a statement in the conclusion to the principles of the National Conference:

> "This statement of principles shall be regarded as tentative and subject to revision and amplification in the light of future experience. The principal purpose is to indicate the importance of voluntary cooperation between our professions, whose members should use their knowledge and skills to the best advantage of the public."

A similar recommendation was adopted by the Nebraska Society of Certified Public Accountants and the State Joint Conference has been functioning since that time.

The representatives of the Accountants upon the State Joint Conference presently are:

J. H. Imig, Omaha, *Chairman*
O. R. Martin, Lincoln
Phillip G. Johnson, Lincoln
Harry E. Judd, Omaha
Orin M. Countryman, Grand Island

A meeting of our State Joint Conference was recently held at which time we were advised that the National Conference of our two As-

sociations was now considering a statement of principle with reference to federal estate tax returns. Believing that our State Joint Conference might well await the announcement of our National Associations, after a full discussion, the following resolution was adopted:

"WHEREAS, the National Conference of Lawyers and Certified Public Accountants has not taken any action in the field of estate and gift tax returns, and
"WHEREAS, it is the consensus of this Joint Conference in Nebraska that it will probably wish to conform to the principles adopted by the National Conference in the field of estate and gift tax returns,
"BE IT RESOLVED, that that portion of the recommendations extending the Statement of Principles to estate and gift tax returns adopted at the meeting of the Joint Conference on October 25, 1951, be declared ineffective pending further action by the Joint Conference, provided, however, that this action shall not be construed to enlarge or diminish the proper field of either profession."

Your Committee, therefore, recommends the approval of the foregoing resolution.

RAYMOND M. CROSSMAN, *Chairman*
BARTON H. KUHNS, *Co-ordinator*
JAMES W. R. BROWN
THOMAS M. DAVIES
H. HALE MCCOWN
ROBERT R. MOODIE

PRESIDENT WILLIAMS: As a matter of information, and to enter it in the record, I interrupt the session to announce that the final registration for this annual meeting was 863; and that the registration at the Institute Wednesday was 365, each by far the largest meeting we have had. Also, at the middle of the afternoon yesterday, because we already had exceeded the capacity of this hotel to serve dinners at the annual dinner last evening, because they could not at that late hour hire additional bus boys, we stopped selling tickets at the 625th ticket, which is very close to 200 more than have ever before been purchased for an annual dinner.

The report of the Special Committee on Joint Conference of Lawyers and Accountants, Mr. Raymond M. Crossman, Sr., Chairman. Mr. Crossman!

RAYMOND M. CROSSMAN, SR.: Mr. President and Ladies and Gentlemen of the Association: We have had since 1951 the Joint Conference of Lawyers and Accountants in Nebraska. It was set up as a permanent organization to be available at all times during the year in the event there was any matter to be brought before this Joint Conference. It consists of five members from the State Association of Lawyers and five members from the State Association of Accountants.

The first statement of principles which was adopted by this Joint Conference went beyond the statement of our national associations. Our national associations had restricted the statement to income tax returns. Our Joint Conference in Nebraska extended the statement to gift and estate tax returns. Having learned quite recently that the national Joint Conference was about to take up the matter of a statement of principles as to an estate tax return, and realizing that we were out beyond our national associations, our Joint Conference adopted this resolution:

WHEREAS, The National Conference of Lawyers and Certified Public Accountants has not taken any action in the field of estate and gift tax returns; and

WHEREAS, It is the consensus of this Joint Conference in Nebraska that it will probably wish to conform to the principles adopted by the National Conference in the field of estate and gift tax returns; be it

RESOLVED: That that portion of the recommendations extending the statement of principles in estate and gift tax returns adopted at the meeting of the Joint Conference on October 25, 1951, be declared ineffective pending further action by the Joint Conference; provided, however, that this action shall not be construed to enlarge or diminish the proper field of either profession.

That may seem to be a little involved, but it means we return to status quo on our statement as to income tax returns but not extend it to estate and gift tax returns at the present time.

Mr. President, your committee wishes to move the approval and adoption of the resolution that was adopted by the committee. I move its adoption.

PRESIDENT WILLIAMS: Is there a second?

PHIL B. CAMPBELL (Osceola): I second the motion.

PRESIDENT WILLIAMS: I am going to reverse the order of the next two reports in the printed program. We now will have the report of the Committee on Legal Aid, John W. Delehant, Jr., Chairman, Mr. Delehant!

JOHN W. DELEHANT, JR: Mr. President, the report of your committee appears on Pages 49 and 50 of your advance program. By way of a thirty-second summary, it is enough to say that the committee feels that the legal aid problem is being met in Omaha and Lincoln by means of the clinics set up in the two law schools. The committee feels that the problem of legal aid is not being met elsewhere in the state, and that there should be established through the local bar associations some organized method of legal aid on a rotating or voluntary basis, and that the establishment of such a program should be well publicized in these communities throughout the state. That is our report.

PRESIDENT WILLIAMS: Thank you, Mr. Delehant.

REPORT OF THE SPECIAL COMMITTEE ON LEGAL AID

Your Committee has investigated the status of legal aid in Nebraska and reports the following:

OMAHA

The Omaha Legal Aid Clinic is jointly sponsored by the Creighton University School of Law, the Omaha Bar Association, and the Barristers Club of Omaha. The Legal Aid Clinic opened its office in the law school in November, 1951.

The purpose of the Clinic is to provide free legal aid to those who are not financially able to pay for the services of an attorney. The Clinic is under the direction of Dean James Doyle. Snior law students, aided by twenty volunteer practicing lawyers, carry on the work of the Clinic. From October, 1952 to date, approximately 130 cases have been referred to the Clinic. The majority of referrals come from social welfare agencies and public offices in the City. The majority of the cases involve domestic relations.

The relatively small number of cases referred is probably due to the fact that Omaha has the services of a Public Defender's office, which handles a great volume of legal matters for persons unable to afford the services of private attorneys. Office hours are maintained on Monday and Thursday afternoons from 1:00 P. M. to 5:00 P. M.

It is the opinion of the Committee that the problem of legal aid has been met in the Omaha area.

LINCOLN

The Lincoln Legal Aid Clinic is sponsored by the Nebraska University College of Law, the Lincoln Bar Association, and the Lincoln Barristers Club. Its office is located in the College of Law Building.

The Clinic is operated by fourteen senior law students under the direction of Edward D. Morgan. Forty-five practicing atorneys cooperate in the program. During the current year, 103 cases have been handled in which service has varied from consultation to court action. As in all clinics, it is the practice to require clients to pay actual court costs. The Clinic has found that some clients are unable to raise even this small amount, and therefore, a loan or gift fund is now under consideration. The work of the Clinic can be categorized as domestic relations 50%, economic matters 35% and other matters 15%.

It is the opinion of the Committee that the legal aid needs of the Lincoln area are served by the present facilities.

OUT-STATE

The Committee has been unable to discover any organized program of legal aid in other areas of the State. Legal aid is on a purely voluntary basis, where lawyers donate their services to persons in need. It

is the opinion of the Committee that a Legal Aid Clinic, as such, can best be established when the facilities of a law school are available. The Bar does, however, have an obligation to serve all persons in need of legal aid, regardless of where they may reside. There appears to be no reason why local Bar Associations in localities other than Omaha and Lincoln cannot designate one or more lawyers to handle legal aid in their area on a periodic and rotating basis. It is the opinion of the Committee that such a program should be established by those local associations and the fact of the establishment should be well publicized throughout the various communities.

JOHN W. DELEHANT, JR., *Chairman*
THOMAS C. QUINLAN, *Co-ordinator*
JAMES F. CROWLEY
TYLER B. GAINES
BERNARD S. GRADWOHL
LYNN D. HUTTON, JR.
ROBERT D. MULLIN
LOREN G. OLSSON
BAYARD H. PAINE, JR.
ELMER M. SCHEELE
JOHN W. STEWART

PRESIDENT WILLIAMS: The report of what,—at the beginning of the year—was called the Committee on Public Relations,—which we have renamed the Committee on Public Service. Mr. James J. Fitzgerald, Chairman. Mr. Fitzgerald!

JAMES J. FITZGERALD: Mr. President and Gentlemen: This report will necessarily be a little hurried, but our report which appears on Pages 52 to 55 of your printed program goes into considerable detail both as to what the committee did this past year and what we recommend that the next committee do. I am allotted ten minutes, and there are five affirmative recommendations which appear on Page 55 of your program.

No. 1—and I understand I have to submit each one of these individually—we recommend a first year budget of $12,000.

In that connection, we have already hired a Public Service Director. We are engaging his services for a salary of $5,000 a year. Now, we think that if you pay a fellow $5,000, you have to give him some money to spend. So that is No. 1. We recommend a budget of $12,000, and I so move.

PRESIDENT WILLIAMS: Is there a second?

PHIL B. CAMPBELL (Osceola): I second the motion.

PRESIDENT WILLIAMS: I won't rule the motion out of order but I will remind you, as we were reminded yesterday, that only the Executive Council has the authority to spend Association funds. I

take it, Mr. Fitzgerald, that this motion can be deemed to be simply a recommendation to the Executive Council. Is that correct?

MR. FITZGERALD: Yes, that is correct. The salary of $5,000 to the Public Service Director was approved and the person selected was hired by that Executive Council, so this, as I think all of these things are, is advisory only. With that in mind I do make the motion.

PRESIDENT WILLIAMS: Are you ready for the question? All those in favor say "aye"; those opposed, same sign. It is unanimously carried.

MR. FITZGERALD: No. 2—and this isn't following the order in which the recommendations appear in the program—we recommend that a Juror's Manual be published. The details of that will have to be worked out by next year's committee. As to the financing, it was the committee's thought that that be done by the local bar associations and the cost be defrayed by the local bar associations as part of the public relations program of each individual bar association. We recommend that this Juror's Manual go a great deal further than the manual which is currently being used here in Douglas County. We recommend that it include our professional Code of Ethics. We recommend that it include the moral and educational requirements of a lawyer. There is now a joint committee between the Public Service Committee and the District Judges' Committee that are working together on the publication of this Manual. But in this part of the program, at least, we are just recommending that the Manual be published and that the details of it be worked out betwen the District Judges' Committee and the Public Service Committee of this organization.

I so move, Mr. President.

PRESIDENT WILLIAMS: Is there a second? Are you ready for the question? All in favor say "aye"; those opposed, same sign. It is unanimously carried.

MR. FITZGERALD: No. 3, which appears as No. 4 in your printed program, we recommend that the Association prepare, publish, and distribute a printed Code of Ethics of the legal profession to be prominently hung in every court house throughout the state. The financing of this is again a matter for next year's committee, but here again, if possible, we recommend that the local bar associations do this and have prominently inscribed across the bottom of the Code of Ethics, "Presented by the Local Bar Association."

I so move in that connection, Mr. President.

PRESIDENT WILLIAMS: Is there any discussion? All those in favor say "aye"; those opposed, same sign. It is unanimously carried.

MR. FITZGERALD: No. 4, which appears as No. 5 in your printed program, we recommend that next year's Chairman of the Public Service Committee be an attorney who practices at Lincoln.

Now we are cognizant of the fact that there are many able persons from other parts of the state, but under the particular setup as

it exists now, the Public Service Director for the Nebraska Bar Association is stationed at Lincoln, and he devotes full time to this work. It was our thinking in that regard that if the Public Service Committee is to be of any good at all or to have any actual voice in the operation of this program, the committee Chairman ought to be available at all times for consultation and for guidance and advice to the Public Service Director and to Mr. George Turner. So we want to keep the committee active. We don't want to just turn this thing over to a nonprofessional man, a layman, and call him a Public Service Director, and turn him loose. We think that the committee ought to keep a constant supervision of this program and be available at all times so that if the Public Service Director has a problem he could consult right away either personally or by telephone with the Chairman of the committee.

So we recommend that next year's Chairman of the Public Service Committee be a Lincoln attorney. I so move, Mr. President.

PRESIDENT WILLIAMS: Is there any discussion? All those in favor say "aye"; those opposed, same sign. The Chair is not in doubt. Is there a call for a division of the House? The motion is carried.

MR. FITZGERALD: No. 5, which appears as No. 2 in the printed program, we recommend that all Judges who are in judicial session passing upon any matter, do it from the bench and wear a robe while they are so presiding.

The committee doesn't see that there are two sides to that. We think there should be no objection whatsoever to a judge wearing a robe at all times when court is in session or open for the transaction of professional business. This, of course, would be a matter which the District Judges' Association would have to pass on. This is only that we recommend to them that they do wear robes while in judicial session.

I so move in that regard, Mr. President.

RAYMOND G. YOUNG (Omaha): I would like to ask one question. Does that apply to County Judges?

MR. FITZGERALD: It was the opinion of the committee that it include County Judges and Municipal Judges.

MR. YOUNG: I suppose the committee has given consideration to the situation in Douglas County. There is a tremendous amount of business transacted by Judge Troyer across his desk, maybe twenty-five or forty lawyers participating every Saturday morning. If he had to go on the bench to make formal disposition of every matter presented, it would slow things up some.

MR. FITZGERALD: We not only gave consideration to that, Mr. Young, we discussed it in detail, and this was the thinking of the committee, that it could be better done, more expeditiously done if he did that from the bench. For most of the people who come before the county

judge in getting a will probated or proved up, that is probably the only time they would be in court, and if it is done over a desk, with people smoking cigars or cigarettes, it detracts from the impression and the dignity that they carry away with them. So that is our thinking on it. It will cut out some visiting, it will give added dignity, and I don't believe our current judges would have any objection to doing it that way. It seems to me it will go faster because there will be less visiting and it will be done with more dignity if done from the bench. It will mean something to the people who are in court for their one and only time in their life. That is our recommendation. That point did not escape our attention. We discussed it in detail.

I renew the motion.

WILLIAM G. WHITFORD (Madison): Mr. Chairman.

PRESIDENT WILLIAMS: Just a moment. Is there a second to the motion?

W. C. CONOVER (Grant): I second the motion.

MR. WHITFORD: I wonder if it escaped the attention of the committee that there are court houses in the state where even a District Judge doesn't have a chambers. There are many court houses in the state where the County Judge doesn't have a chambers. I don't know what you would add to the dignity of the thing if he has to put his robe on in front of every one.

MR. FITZGERALD: Our thinking in that regard was that if he lacks those other facilities which you mention, there is all the more need for a robe to set him off from the other fellows who are in there sitting around on stools and benches, smoking.

Now bear in mind that this organization can't say, "You do it." All we can say is, "Please will you do it. We think it's a good idea." Then it is up to the County Judges and to the District Judges to follow it or not follow it.

MR. WHITFORD: May I make this comment. You say there is all the more need for the dignity if he doesn't have those other facilities. I am reminded of one time when we had a minister of a faith that wore robes but no collars, and he would come in late putting on his robe on his way up to the pulpit. I don't think that added anything to the dignity.

Now, isn't the judge going to be in the same position when he has to put his robe on in that one room that is available?

MR. FITZGERALD: I think those are details which require the special attention of the local groups and the local judges.

I remember one time when I was arrested—I won't say it was the only time I was arrested—but on this particular occasion I was arrested in a town in Iowa, and the police officer took us to a hardware store. The fellow who was the Justice of the Peace also owned the hardware store. He sat on a keg of nails and the rest of us sat around

on benches while he tried us. I won't mention the outcome of the trial. But if I were not a lawyer and that was my only experience with the administration of justice, I would have been just plain disgusted with it.

So we think that anything that can be done to put the court above the other people who are in that court room for the transaction of professional business is desirable from our standpoint. I recognize that there are local problems and details that will have to be worked out. We further recognize that we can't make the judges wear robes if they don't want to. All we can do is say that we think it is a good idea. If they don't want to do it, well, we just can't do anything about it.

PRESIDENT WILLIAMS: Is there further discussion? All those in favor of the motion say "aye"; those opposed, same sign. The Chair hasn't the slightest bit of doubt. The motion is overwhelmingly carcied. I invite a division of the House.

REPORT OF THE COMMITTEE ON PUBLIC SERVICE

The first general meeting of the Committee on Public Service was held in the Capitol Building at Lincoln, Nebraska on February 28th, 1953. The Committee attendance was almost one hundred per cent. All members attended at their own expense.

The Committee devoted most of its time and attention to a discussion of budget and finance. It was pointed out that this year, as in the past, this Committee had been allocated only the sum of $500 per year. It was conceded by all that very little good could be accomplished on such a limited budget.

Mr. Laurens Williams, Nebraska Bar Association President, pointed out that it was absolutely impossible to increase the appropriation to this Committee unless the State Association dues were increased to $20.00 per year.

The Committee's attention was also invited to the fact that Minnesota had appropriated $26,000 for a public service program for the current year and had spent $40,000 the preceding year. Likewise, the Texas and Colorado State Bar Associations had extensive and expensive public service programs in progress. The Chicago Bar Association, independent of the Illinois Bar Association, has likewise undertaken a program to better acquaint the lay public with the true function and position of the legal profession in the community. All of the Associations named above have retained full time public relations or public service directors at attractive salaries.

Considerable discussion was devoted to the American Bar Association Public Relations Manual. It was conceded that this document was the finest and most inclusive work on both the need for such a pro-

gram by the various Bar Associations and also the most efficient and economical manner of conducting such a program.

The Committee took the following action:

1. Decided that all efforts should be exerted to accomplish an increase in State Association dues from $10 to $20.

2. Decided that the minimum budget for a public service program should be somewhere between $11,000 and $15,000 per year.

3. Decided that when and if such funds were available, a full time public service director should be retained by the Association at a salary of between $4000 and $6000 per year.

4. Authorized the Chairman to take appropriate action to publicize the fact that the State Association was interested in securing the services of a qualified director, provided funds were made available. The Chairman was authorized and instructed to commence interviewing applicants for the job.

5. Decided that Miss Kay Dornon, currently Public Relations Director for the Chicago Bar Association and former Public Relations Director for the Minnesota State Bar Association be invited to attend the next committee meeting and go over budget requirements in detail.

6. Authorized Mr. Laurens Williams and Mr. Joseph Tye, Coordinator of our Committee, to visit the American Bar Association Public Relations Office and the Chicago Bar Association's Public Relations Office to review and analyze the experience and recommendations of those organizations in the public relations field.

A second meeting of the Committee was held in the Capitol Building at Lincoln on March 21st, 1953. Again, the attendance was gratifying.

Miss Kay Dornon, Public Relations Director of the Chicago Bar Association, reported in considerable detail the program on which the Chicago Bar Association was working currently.

A series of radio transcriptions, "You and the Law," have already been run over Radio Station KGFW at Kearney, KFOR at Lincoln, and KNRN at Lexington. The same series is now being run over Station KBON at Omaha under the sponsorship of the Omaha Barristers Club and at Beatrice.

The Committee adopted the following public relations program in the event that adequate funds were made available:

1. Continuation of the publication of the Bar Journal with a minimum publication to be on a quarterly basis.

2. Closer coordination between our Committee and other State Association Committees, with particular reference to the District Judges, Unauthorized Practice of Law and Disciplinary Committees. The general approach was intended to improve and clarify the relations between Judges, the legal profession and the general public and to

improve and elevate professional and judicial conduct within the Association itself.

3. Publication of additional pamphlets for distribution through law offices and banks.

4. Preparation and distribution of news articles reflecting favorably on the profession with particular attention to the smaller newspapers throughout the state.

5. Organization of a Farm Bureau Program, whereby the Association would provide speakers to address county agricultural association meetings, 4-H club meetings, and women's agricultural auxiliary association meetings.

6. Essay contests for school children with presentation of a key or award to be made by an officer of the local Bar Association.

7. Formation of a Speaker's Bureau to provide speakers for luncheon clubs.

8. Continuation and expansion of the radio programs.

9. Television shows. This phase of the program should not be undertaken until a polished and professional performance can be guaranteed. The proposed practice of rotating Bar Association members as participants was frowned upon.

The Committee took the following action:

1. Instructed Mr. Laurens Williams and Mr. Fitzgerald to prepare a letter addressed to every practicing attorney, outlining the need for a state-wide public relations program and outlining in some detail the type of a program contemplated if an increase in State Association dues were approved.

2. Appointed Jean B. Cain to coordinate with the District Judges in the preparation of a juror's manual.

3. Appointed Judge Robert Troyer to investigate the feasibility of preparation and distribution of a suitable plaque containing our professional Canons of Ethics. It was contemplated that such a plaque would be purchased by local Bar Associations and presented for display in the various court rooms throughout the state.

4. Approved a recommendation that all Judges in the state wear robes while presiding at any type of judicial hearing.

Mr. Williams and Mr. Fitzgerald prepared and distributed a letter to all attorneys licensed to practice in the State of Nebraska, setting forth the need for better relations between the bench and legal profession with the general public and urged all members to vote in favor of an increase in dues to make such a program possible. The letter was distributed under date of May 12, 1953.

The Chairman of the Committee met with Mr. Joseph Votava, Chairman of the Special Committee on Budget and Finance and presented a detailed public relations program.

The Chairman of the Committee appeared before the Executive Council and explained the contemplated program in some detail and requested an initial budget in the sum of $11,700 for the first year.

The following affirmative recommendations are submitted unanimously by the Committee:

1. *That an initial annual budget of $12,000 be allocated to the Public Service Committee.*

2. *That all Judges throughout the state be requested to wear robes while presiding at all judicial hearings.*

3. *That a juror's manual be prepared and distributed to all jurors. The manual would be prepared jointly by the appropriate Committee of District Judges and the Public Service Committee. This manual should include not only a description of the function of a juror, but should set forth the professional Canon of Ethics, the educational and character requirements before admission to the bar, and a description of the dignity and function of the Judges.*

4. *Preparation and distribution of a Code of Ethics to be displayed prominently in Court Houses throughout the state.*

5. *It is further recommended that the next Chairman of the Committee on Public Service be a practicing attorney in Lincoln, Nebraska. The reason for this recommendation is that the full time Public Service Director will live and work in Lincoln. It is believed that only by having the Chairman of the Public Service Committee readily available for consultation can maximum efficiency be obtained and especially is this true during the initial phases of the program.*

JAMES J. FITZGERALD, *Chairman*
JOSEPH C. TYE, *Co-ordinator*
ROBERT C. BROWER
JEAN B. CAIN
THOMAS F. COLFER
HANS J. HOLTORF
JAMES A. LANE
DONALD P. LAY
WILLIAM H. MEIER
ROBERT R. MOODIE
JACK C. OSBORNE
JOSEPH R. SEACREST
JUDGE ROBERT R. TROYER

PRESIDENT WILLIAMS: That, ladies and gentlemen, completes the committee reports. I ask the members of the panel for the afternoon program to join me now at the speaker's table.

EDWIN CASSEM (Omaha): Because we are drawing to the end of this convention, may I ask if this Association convention has gone on

record endorsing and urging upon the Congress the enactment of the Jenkins-Keough Bill?

PRESIDENT WILLIAMS: It has not. The time for offering resolutions was closed at the end of the morning session yesterday. No such resolution was offered.

MR. CASSEM: Would I be out of order now to . . .

PRESIDENT WILLIAMS: You would be out of order at this time. Unfinished business will be taken up immediately following this part of the program.

MR. CASSEM: Very well.

PRESIDENT WILLIAMS: I am sorry, but it is out of order at this moment.

Now, will the panel join me.

In the meantime may I express my gratitude to Vice-President John J. Wilson for presiding during my unavoidable absence at the opening of this session.

Ladies and gentlemen, last June this Association voted by approximately two to one to increase its annual dues from $10.00 per year to $20.00 per year for those who have been engaged in the practice five years or more, and from $5.00 to $10.00 per year for those engaged in practice a shorter time, and to increase the dues of the inactive members.

The primary purpose of that increase in dues was to provide the money with which adequately to finance a proposed program of public relations on behalf of the Nebraska State Bar Association and the entire bench and bar of this state, in the public interest predominantly.

"Public relations" obviously means many things to many people. The function of the program which we are about to present is to give us all a little better understanding of this package which we purchased some three or four months ago and for which those of you who have been kind enough to pay your 1954 dues in advance already have commenced to pay.

We have assembled here on the platform four people who, in my very considered judgment—I might say, judgment arising out of my research—are better qualified to speak to us on this subject than any other four people in the United States of America. I make that statement, ladies and gentlemen, deliberately with full knowledge of what I said.

I will present these persons to you individually as their turn on the program is reached. And in order not to encroach upon their time, I am going to forego making any further introduction of this subject myself or discussion of the personnel of this panel.

Our first speaker is a member of the Board of Governors of the American Bar Association, a distinguished practicing lawyer of Hammond, Indiana, who is the Editor of the American Bar Association's

Manual on Public Relations for Bar Associations to which I made reference earlier in the meeting. I regret very much that the supply of copies which we ordered for this meeting simply did not arrive. They are not yet off the press. We have one such at the table. We invite you to look at it later. In our view, it is a remarkable work.

Mr. Tinkham has had long experience in the field of public relations of bar associations, was long a member of the Committee on Public Relations of the American Bar Association.

With that wholly inadequate introduction, it is my pleasure to present to you Mr. Richard P. Tinkham of the Hammond, Indiana, bar. Mr. Tinkham!

THE PUBLIC RELATIONS OF THE BAR

By

Richard P. Tinkham

Thank you, Mr. Chairman. I think your introduction was more than adequate.

I am delighted to be here this afternoon to discuss with you a few moments a subject which I consider of major importance. I want to say first off that you are due congratulations on the step you have taken in the direction of public relations, in engaging counsel, and increasing your dues to pay for your program.

I don't intend in my brief remarks in the opening of this panel discussion to recommend any specific action, except perhaps indirectly. We have tried to cover specific fields in the Public Relations Manual, of which your President has spoken. I do want to give you, however, some idea of the broad field which the subject encompasses, and I also want to give you some of the thoughts of the committee of the American Bar Association on the approaches and some solutions to the problem.

Perhaps I ought to begin by telling you what we think Public Relations is. There is a lot of confusion on this subject. We think that good Public Relations is merely appreciation on the part of the public of good performance by the bar. Many associations and many lawyers believe that better Public Relations is getting more law business. I want to say to you now with all the power at my disposal that that is definitely not good Public Relations activity in the opinion of the A.B.A.

I have seen billboards in a Midwestern state, sponsored by a city bar association, saying, "See Your Lawyer Now and Draw Your Will." I have seen newspaper advertisements in a Southern state, saying, "See Your Lawyer First," In the opinion of the committee that is bad Public Relations, not good Public Relations.

It may be that when we have our house in shape, the lawyer will benefit by getting more business, but the idea of getting more business can never be the motivating factor behind Public Relations activity. Our purpose is to re-establish the lawyer as the leader in his community. Many of you here remember the time, not too long ago, when the lawyer was in fact the leader in every community. That time is no longer with us.

I want to talk to you generally this afternoon about two major fields into which Public Relations activity should and must be divided, if it is going to be successful. First, we have an internal job to do—to clean up our own houses; and second, we have the external job to do —to convince the public that lawyers and lawyers sitting as judges are indispensable and valuable parts of our economy and society. Accomplishment in the first field—cleaning up our own houses—is a condition precedent to much of the activity in the second field.

Can we tell the public that our lawyers are competent and honest if they are not? Can we tell the public that our courts are fair and efficient if they are not? So first off, we must educate and re-educate the lawyer and the judge to the fact that each is a most important part in our Public Relations activity. Public Relations are made every day in each of our offices, across our desks, on the street, and in public meetings. Every lawyer has obligations to his client, to the court, and to his community, and in addition, to his brother lawyer. All of us know from bitter experience that two or three lawyers, or even one can blacken the reputation of an entire bar. When the public reads about the wayward lawyer on Page 1—and he always makes Page 1—the public inclines to the belief that all lawyers are in the same category. We can't blame the public. We have only ourselves to blame. Why is it that we take the transgressions of our brother lawyers with such complacency and fail to act when action is the only remedy?

The problem of the conduct of the individual lawyer is not a problem of selection of applicants for admission to the bar. Most of us who have had anything to do with admissions to the bar realize that the ordinary applicant is far too young and inexperienced and untested in the affairs of the world to have formed any character traits which are discoverable. Consequently, it is a matter which must, of necessity, be handled by disciplinary action after admission.

While most associations report in answer to questionnaires that their grievance procedures are working satisfactorily—and I am happy to learn that Nebraska has taken steps to inquire as to the efficiency of its grievance procedures—we know from experience, if we are honest with ourselves, that most grievance procedures are slow, ineffective, and in some places non-existent. There are two committees working on a code of Model Grievance Procedures at the present time.

The A.B.A. has a committee and the National Conference of Bar Association Presidents also has a committee.

Let me suggest, however, that there are two things wrong with present grievance procedures. In the first place, the ordinary grievance committee consists of friends and competitors of the accused lawyer, his fellow townsmen, generally. For obvious reasons they hestiate to act, and the decision in many cases is a compromise in which the accused lawyer, and perhaps the guilty lawyer, fares far better than the injured client. We must provide impartial and aggressive grievance committees.

Secondly,—and this was something that was discussed at the A.B.A. meeting in Boston—the practice of a supreme court or an appellate court in appointing a sitting judge to hear a grievance is roundly condemned by those who have had extensive experience in the field, such as the general councils of large bar associations like Chicago, California, and places of that kind. It is the experience of those people that the judge is far too busy with other matters to be really interested in this thing. He acts too slowly, and he is too favorably inclined toward the lawyer. So impartial hearing officers are a necessary step in the improvement of grievance procedures.

Perhaps the ultimate answer is to adopt some form of indemnity such as that in existence in England, New Zealand, and three provinces in Canada, where the whole bar is responsible for the defalcation of any lawyer. If we get hit in the pocketbook, we probably are not going to be too friendly toward the one who caused us to lose some money.

So when we have our lawyers competent and honest, and our courts fair and efficient, we can tell the public about these things. However, there are some things we can tell the public about now.

Activity in the field of Public Relations is foreign to the training of the lawyer. They have been taught from law school on that lawyers don't advertise, and lawyers do not seek publicity. By virtue of these self-imposed standards of decorum, we have kept the public from knowing what we do, how we do it, and our importance in the American scheme of things. Does America need courts? Does it need laws? Does it need lawyers? If we deprive America of any one of these three, we as lawyers recognize at once that anarchy and chaos on the one hand, or dictatorship on the other, are inevitable. "Uncle Joe" taught us this. The lawyers were the first to be liquidated in the communist society.

So we ask ourselves these questions, What do we want to say? To whom do we want to say it? How do we say or do it? We have learned from many public opinion polls, many of which have been taken by experts in California, Iowa, Texas, Michigan, by *Life* and *Fortune* Magazine, the University of Rochester and others, that there is an alarming ignorance on the part of the public as to what the law-

yer does, how he does it, and what he is likely to charge. Most people think that a lawyer should be employed only after one is in trouble. They have no conception of preventive law. Some believe lawyers are the least to be trusted. Some laymen regard the lawyer as a parasite, feeding upon the fat of society. The teacher, the clergyman, the public office holder, and the merchant—as revealed by two pools—are all held to be more important to the community than the lawyer. In Texas the lawyer tied with the labor leader for last place on the question of who is more important to the community. Perhaps we can take some consolation from the fact that the citizens of Texas thought that the lawyer would make the best Justice of the Peace.

Of course, we don't agree. We know better than that. We know that due to the efforts of the organized bar and our fine law schools we are constantly and consistently improving the breed. But the *public* doesn't know that. The public doesn't appreciate it, and that is the thing we have got to get across to the public.

They think that lawsuits take too long. At least two polls highlighted the fact that about half the people felt they would rather take half involved in a claim, or less, rather than face the rigors of a lawsuit and the delays. They don't know how to go about selecting a lawyer. Many prefer to go to banks or trust companies or insurance companies to discuss estate problems. A large number believe that an accountant is more competent to handle tax problems. Thus we find out what we need to say, and we find out the people to whom we need to say it, and that is, so far as our research has gone, the public at large.

After some fourteen years' consideration of this problem, the American Bar Association has come out with a program for bettering Public Relations. This is the program that the A.B.A. has adopted:

First, we must educate the lawyer to his own individual responsibility to the community, to his clients, and to his fellow lawyers. We must also afford him the opportunity to continue his legal education, to keep up to date, so that he can compete with lay agencies which are constantly infringing upon his field. John Mulder will talk to you about that.

We should handle all grievances against lawyers promptly and efficiently and impose disciplinary action, including disbarment, where such action is warranted.

We must improve the administration of justice so as to insure fair and impartial adjudication of cases and their speediest disposition consistent with justice.

We must establish and publicize Legal Aid organizations and Lawyer Referral Service in order to bring no-cost and low-cost legal services to those who cannot afford to pay customary fees.

And, finally, we should educate and re-educate the public as to the significance of law, lawyers, and courts, and the indispensability of each to the preservation of the American form of society and government.

These ideas are developed in the Public Relations Manual mentioned by your President. It will be off the press next week in quantity. We hope you will acquire as many of those copies as you can afford.

I can do little more in opening this panel discussion than merely generalize. I could mention activities in the Public Relations field which have cost the organized bar nothing, such as interesting banks, insurance companies, trust companies and title companies in spending part of their advertising appropriations—and they all have them —for the benefit of the lawyer and the courts. Your exhibit of the John Hancock Mutual Life Insurance Company paintings which appeared in the leading magazines of the country is one of these things. And your A.B.A. committee has been active in securing further advertising of this type.

This field, as you recognize, covers all of the activities, substantially, of the organized bar and of the individual lawyer. If you will review in your mind these things that I have enumerated, set out by the American Bar Association as goals in the field of Public Relations, you will see that all of them except one involve deeds and not words. In other words, going back to my original statement of our definition of Public Relations, it is public appreciation of good conduct on the part of the bar. So it involves deeds on the part of lawyers and the organized bar rather than words.

It is our job to inform the public again and again of the importance of our courts and lawyers to this Republic, to make our courts fair and efficient, our lawyers competent and honest, to make legal services available to all regardless of ability to pay fees. When we have done these things we will have preserved our system of justice as we know it, and we will succeed in maintaining a government of laws and not of men. Whether we succeed depends in large part upon you and the other members of the bar of this country. We cannot succeed unless the public has respect for and confidence in our lawyers. Thank you. (Applause)

PRESIDENT WILLIAMS: Thank you very much, Mr. Tinkham.

The next speaker is not a lawyer. However, having come to know him somewhat during the past eight or nine months, I can assure you that he is the kind of folk that we lawyers hope that we are.

I present to you Mr. Don Hyndman who is technically called the Executive Assistant to the Committee on Public Relations of the American Bar Association, whose job really is that of Public Relations Director for the American Bar Association. It is a pleasure to present

to you this very grand gentleman who certainly knows his business, Mr. Don Hyndman.

METHODS—THE LONG AND SHORT VIEW

By

Don Hyndman

Thank you, Mr. Chairman. I heard a man say the other day that one of the richest, most gratifying experiences of his life was giving gratuitous advice to lawyers. He said it did something for his spirit to be asked to talk to a bunch of old pros in the business of giving advice.

I don't quite feel that way. I feel a little abashed to be asked to come out here and talk to you about this subject. The reason I am abashed is that the subject itself is so complex, so broad that it's hard to pinpoint it or put it in terms that every one and any one can understand and agree on.

I never had that more strikingly demonstrated for me than just about two weeks ago at Ann Arbor, Michigan, at a Midwest Institute on Public Relations for the Bar, attended by some one hundred Public Relations chairmen and officers of local bar associations in Michigan and the Middle West. There were some very able and eminent speakers on the program, among them Mr. Tinkham, but the program began with a man whose title was, "Talk To Their Eyes—Their Ears Are Tired." As you might imagine, he was a gentleman who was in the business of selling films and slides to illustrate industrial developments, and the like. He made a very convincing and persuasive demonstration using a motion picture projector and screen to illustrate that the best way, and really the *only* way, to get across a selling point was with the use of slides and films. He sat down to appropriate applause.

The second speaker got up, and he happened to be a member or officer of the Michigan Association of Broadcasters. The first thing he said was that the first gentleman didn't know what he was talking about. He said, "Their ears are not tired," and he proceeded to cite statistics about the tremendous number of people who still listen to radio, and, in general, to argue that the real way that the bar associations can reach the great mass of people of America is through the radio..

The third man who got up was a newspaper editor, in fact, the President of the Michigan Publishers' Association, and he had his own idea about how to go about this. He had some ideas about what was wrong with the bar— you have heard them a dozen times so I won't repeat them. His idea was this, and he put it in the form of a question: "Why don't you carry on a regular and continuing advertising

campaign?"—he didn't say through the newspapers, but of course that is what he meant.

At that point some one near me nudged me and said, "I know one good reason." Of course he was thinking about what a really broad and sustained advertising program costs.

Then came the next speaker who happened to be a television man, a very good one, a very able one, from Detroit. He proceeded to expound the virtues of television, of the growing influence of television. Of course, he was right. He said, for example, that there are now three hundred television stations operating in the country as compared with about one hundred sixty just a year ago; and that it is a tremendously increasing medium for reaching the American people. Of course, he was right there.

But there we had had four speakers and four different ideas about what was the best way to approach the lay public. Then we went to luncheon, and there we were addressed by a very able, eloquent gentleman from the Ford Motor Company who happened to be associated with their Community Affairs Program. He was also quite a music man. He said that in preparation for his appearance there he had done considerable research on why lawyers were coming to be so concerned about their public relations, and he found some rather interesting things. I'm going to steal one of them.

He said that in his research he found that even back in Biblical days people were saying unkind things about lawyers. He cited the 11th Chapter of St. Luke where it says: "Woe unto you also, ye lawyers! for ye lade men with burdens grievous to be borne, and ye yourselves touch not the burdens with one of your fingers."

Then he cited a few more quotations from literature until he got down to Carl Sandburg. This is what he said Sandburg had to say—it was new to me and it may be to you:

"Why is there always a secret singing
When a lawyer cashes in?
Why does a hearse horse snicker
While hauling a lawyer away?"

From there he went on to say that he thought the only real, solid way for lawyers to build their reputation as a profession was by more organized, less haphazard participation in local government, community affairs, and affairs of all kinds.

Well, you might suspect that by that time every one was pretty confused about what was wrong, and what should be done about it.

When we went back for the afternoon session of the seminar the very first man who got up startled and confounded the audience by saying, "I think people like lawyers." And from there he went on to say that he thought lawyers weren't quite as bad as some people were trying to picture them. He thought the best way to prove that would

be to go out and knock on doors and ask the mothers of young sons what they would like their boy to grow up to be. He thought that a respectable number would reply that they hoped their sons would be lawyers.

I think he was right. To a certain extent I think all of the speakers were right. They all had their own ideas, but in toto they were all suggesting useful things, good things to do in public relations programs.

I am not so much concerned, personally, that among lawyers, for example, there are many different ideas about how to go about this job that you are undertaking. The most important thing is that you are doing it, each in his own way. The most important thing to remember, I think, is that each one of you has a responsibility and each one of you is a public relations man for the bar.

My subject here was "Methods," and I think I might say a word about how I conceive this whole job of improving bar public relations. I think it falls into two categories. Mr. Tinkham alluded to it more ably than I will be able to, no doubt. But I think it falls into two subject heads. One is the immediate job of increasing the flow of information about what the organized bar—in this case your own bar association—is doing; seeing to it that your state association and your local associations establish as close contact as you can with your newspapers, the radio, and the television outlets which you have; that in everything you do you start thinking in terms of publicity possibilities— everything you do, your committee work, your meetings. I believe that if you do that you will find that getting increased publicity is really a very simple thing. It is not a complex thing at all.

The second is the long range phase, and this is where you come in, as distinguished from the professional public relations man. He can concern himself with the first job, and will, but the second phase is the long range one where you come in, and that is doing the things that have to be done to deserve good publicity and the approbation of the public.

I am thinking now of the civic activities in which you engage, the public service work of all kinds, the improving of the disciplinary procedures and grievance procedures, the speaker's bureaus that you carry on and through which you try to reach the people and let them know what the bar is and what it stands for, the adult education work that goes on—all of these things form the foundation and are essential to a really good and continuing public relations, public information program.

In the long run the test is going to be whether, first, you engage in enough of these things and are willing to devote enough of your attention to these things to enable a good solid publicity program to be carried on.

I am not going to talk about the details of how to utilize the press, or how to go about dealing with radio stations, but I hope that later if we have time during the question period, if any of you are interested in any specific part of that, you will ask a question.

I do think that the Manual, of which Mr. Tinkham is the editor, is going to prove for all of you who have an interest or part in the public relations program the best source of help that you have. It is a very attractive and worthwhile book that is just full of ideas and specific suggestions about how to go about dealing with each of the media, how to set up Speaker's Bureaus, and all of these things that we have been mentioning.

I promised to be brief, and I think I have probably taken up my time. I want to say just one further thing. I think the old football maxim, "A good offense is the best defense," applies very well here. I think the American Medical Association might agree with that. By neglecting their "offense" a little too long, they had to invest a great amount of money to get on the offense. I think that the lawyers, while some might say they have been a little tardy getting in the field, I think they have come in at a time when it is going to yield tremendous benefits and probably save an awful lot of grief and woe in the future. Thank you. (Applause)

PRESIDENT WILLIAMS: Thank you very much, Mr. Hyndman.

One of the reasons why you are here today, and one of the dominant reasons, is the very charming young woman whom I am about to introduce. When we started considering our public relations program some time ago, we learned that the State Bar Association of Minnesota had had what is perhaps as successful a public relations program as any state bar association. In casting about to find some one who could tell us more about the facts of life in this area, we learned that during the first four years of its existence the Minnesota program had been under the guidance and direction of a young lady who had transferred her affections to the Chicago Bar Association, and had become its Public Service Director. So we went to Chicago and had the pleasure of meeting her and learning a great deal, so much that we decided we couldn't bring it all back, so we persuaded her to come to Nebraska and meet in an all-day session with our own Committee on Public Relations. And I may say to you that from the time that session was over until now, there has never been any question about what our Public Relations Committee was going to demand of this bar.

It is a great pleasure for me to present to you a person most competent in this field, a very charming person—Miss Kathleen Dornon, who is Public Relations Director for the Chicago Bar Association. Miss Dornon!

MEDIA—TELLING THE LAWYER'S STORY

By

Kathleen Dornon

Mr. Williams was being kind, but he added two years to my experience which I won't admit. I was with Minnesota two and one-half years rather than four years.

The subject assigned to me for discussion here is that of mass communication media and how to use them most effectively for bar association public relations. Now, mass communication media includes newspapers, magazines, television, radio, drawings, cartoons, books, placards, pamphlets, leaflets, handbills, speeches, public address systems, motion pictures, plays, meetings, rumors, billboards, skywriting, and parades. I don't think we need to consider skywriting and parades —at least I know of no bar association which has used those devices. But that still leaves a pretty big list of things to cover. So I think I shall make it easy on all of us and just talk about pamphlets, with perhaps a word or two about newspapers.

Your choice of a communication medium to carry the message you want to get to the public is dependent, first, upon the nature of the material, and second, on the audience you want to reach. A third important factor in making a choice is whether or not you have funds to spend on the project or whether you must depend upon free publicity.

As far as the nature of the material is concerned, here is an example of what I mean. Newspapers and radio news services will invariably carry a story of misconduct on the part of a lawyer and his subsequent disbarment. It is news because it is unusual for a lawyer or a member of any profession to be guilty of misconduct; but it would be impossible to get newspapers to use as news a story based upon the fact that lawyers have a code of ethics more strict than the law itself, and that the great majority of the members of the profession observe the canons of that code. That is not news—and it's a good thing that it is not. But it is an idea we want to keep before the public.

If the information you want the public to have has one or more of the elements that make news, you can get it into the press. Researchers have catalogued the elements of news as information possessing immediacy, proximity, consequence, drama, oddity, conflict, sex, emotion, or progress. Many activities of the organized bar possess one or more of these elements, but much of the information important to the public relations of the bar does not possess any of these elements, and therefore you have to use other mediums.

One of these mediums is pamphlets, and I think they have proved to be the most successful thing that has been used to interpret the legal profession to the public. They are invaluable for several reasons:

First, the profession can control the information in them and the way in which it is presented. It cannot control the editing of such information if it is released to the press or through other channels. One of the problems of informing the public on legal subjects has been the fear that the information given would be used in such a way that misinterpretation and misinformation would be the result.

The second reason is that while you may hear an idea expressed on the radio or on television, you do not trust your hearing as you do the printed word. If the subject is of importance to you, you want to read about it, review it, and refer back to it.

A third advantage is that the pamphlets are usable to supplement almost all other public relations projects. They can be mentioned on bar radio programs and the resulting requests used as a listener interest gauge. They can be used to supplement information given in newspaper feature stories. They can be made the basis of a program designed especially for specific publics, such as organized labor, farm groups, and women's organizations. They have been used successfully in all these ways.

The last advantage is that they are comparatively inexpensive.

But pamphlets, of course, will not be effective unless the public reads them. Obtaining distribution is therefore one of the problems. It is not too difficult but it does take constant attention.

The subject matter of each pamphlet suggests its own distribution. For instance, this pamphlet on installment buying was selected as the first subject that the Chicago Bar Association wanted to write about. It was selected because the Lawyer Reference Service and the Legal Aid Bureau are swamped with people seeking some relief from garnishments and wage assignments. Their difficulties are due primarily to their own failure to realize what they are getting into when they are lured by "no money down and two full years to pay," but the consequence of their gullibility is complicated by the fact that there is no law in Illinois limiting finance charges.

We wanted this pamphlet to reach the working people. It was launched with a news release in the newspapers and we had thousands of requests as a result. A copy of the pamphlet was also sent to each member of the Chicago Bar and they were asked to contact the companies which they might represent to see if they might be interested in it. The labor unions were contacted, and copies of the pamphlets were sent to the personnel managers of the large companies .

The credit buying situation is so acute in Chicago that the response on the part of the public was almost overwhelming. The business and industrial people jumped at the chance to buy at cost large quantities of this pamphlet for their employees. The labor unions asked to reprint it in their labor papers. Credit unions, small loan comapnies, and banks distributed it. City and state welfare agencies asked for large

quantities of it. One large Catholic church distributed it at mass. An organization for the blind put it into Braille. The Back of the Yards newspaper which services about 30,000 stockyards workers reprinted this pamphlet, and it was so successful that they have reprinted all the rest of our pamphlets. As a result, we have distributed almost 75,000 copies in about two months.

In contrast to this kind of a pamphlet is this one called, "Meet Your Lawyer." This is the thing that we want to get to the public, but it is a more difficult to get them to ask for it. It contains information on legal ethics, fees, the services a lawyer performs, and the activities in the public interest of the bar association. Because we particularly want to get it out, we send it out with the requests for all the other pamphlets that they do write in for, so we have distributed about 75,000 of this one, too.

The initial publicity in the newspapers when the pamphlets are first issued will bring in thousands of requests. After that it is necessary to think up other ideas for distribution. In Minnesota a pamphlet on buying a home was sent out by the County Treasurer with the tax notices.

This little leaflet on traffic laws, and one on what to do in case of an accident were used in a traffic safety campaign, and the traffic police gave them out for minor violations instead of tickets.

Pamphlets on wills the banks and trust companies seem to be most happy to distribute with their bank statements.

This one on unauthorized practice, "How Lawyers You Never See Protect You," is in much the same category as "Meet Your Lawyer," so it is sort of foisted off on people when they ask for something else.

There is no magic formula for success in building good relations with the people in any community. While the activities mentioned assist in building good will, they cannot be wholly successful of the bar association is not meeting its obligations to the administration of justice in the community. The Chicago Bar Association has a particularly difficult and heavy load in this respect, and it makes a continuing effort to meet it, but it still has a long way to go. For instance, it fought for years to improve the caliber of the judiciary in Chicago. It has written a new judicial article which it hopes will cure some of the ills in the state, and it has staged an all-out campaign to get it adopted. It maintains at its own expense a Lawyer Reference Service with a staff attorney and his assistant and a panel of six hundred lawyers. This service takes care of about nine thousand inquiries a year.

In the interest of justice, it provides defense attorneys for persons accused of felonies carrying a penitentiary or death sentence.

It screens the assistants in the State's Attorney's office and in the

Attorney General's office in Cook County. Neither of those officials will hire an assistant of whom the Chicago Bar disapproves.

Its members support the Legal Aid Bureau and supervise its activities and services.

Its seventy-five committees on substantive law make a continuous study of existing laws, recommend needed changes, and try to get those changes through the legislature.

Our day-by-day public relations program consists of assisting with these services to gain for them the necessary public support. Our long-range program, of which the pamphlets are a part, is designed to combat lack of confidence on the part of the public which we believe stems largely from ignorance of the law, ignorance of the services performed by lawyers, and ignorance of the objectives and resources of the organized bar for public service. Thank you. (Applause)

PRESIDENT WILLIAMS: I am sure you now can understand full well why your Committee on Public Service became so enthusiastic about the great potential of this whole program.

Next I have the pleasure to formally present to you again John E. Mulder, Director of the Committee on Continuing Legal Education of the American Law Institute collaborating with the American Bar Association, a long and awkward title but a very important job. I have told you already of his qualifications so many times that I will not repeat them, except to say that what he is about to tell us is an integral part of this whole program of public relations.

It is an honor to formally present John E. Mulder of Philadelphia, Pennsylvania. Mr. Mulder!

THE PLACE OF CONTINUING LEGAL EDUCATION IN A PROGRAM OF PUBLIC RELATIONS

By

John E. Mulder

Thank you, Larry. Ladies and Gentlemen: You have a very smart President. He was particularly smart in inviting me to come here. Right at the start here I have to depart from my script.

I got in here at one-thirty the other morning and I heard some one shouting down in the lobby, "Mr. Mulder! Mr. Mulder!" I turned around but nobody paid any attention to me. I found out they were calling a bellhop whose name is John Mulder.

I do want right here to say a personal word of thanks for the marvelous hospitality I have received since I have been here from Larry, from George, and from all of you. I have been in all forty-eight states in the last six years, and your hospitality is unexcelled.

Larry was very smart in asking me to come here, because I read this program which says, "This is a panel demonstration of what a

Public Relations program can and will do for lawyers, for bar associations, and for the public. Each panel member has had wide experience in the field of Public Relations and can tell us much to insure the success of the program of Public Relations. . ." etc. in Nebraska. He was particularly smart in selecting me because this is the first talk I have ever given on Public Relations. (Laughter)

"Each panel member has had wide experience in the field of Public Relations . . ." That goes for the first three, but you are now down to the dry crust of the loaf of bread, and I am afraid it is going to be very dry. As a matter of fact, I got a little scared at the thought of talking on Public Relations. Then I thought, "Well, maybe he is pretty smart. Maybe he better have some one talk about it that knows nothing about it at all." But I wanted to tell you that at the beginning so that I am not flying entirely under false colors.

Since February 1, 1948, I have had a very, very happy experience to be Director of the Committee on Continuing Legal Education, and I have traveled throughout the country trying to assist state and local bar associations to organize and conduct their own programs of continuing legal education. In May of 1948, only a couple of months after we started on our job, I got a long distance call in Washington from George Turner to send some men out to Nebraska to speak on the Revenue Act of 1948. It was a rather revolutionary act, if you will recall it. So among my first experiences was to be able to send to him three Chicago tax lawyers who spoke on Monday in Omaha, on Tuesday in Grand Island, on Wednesday in North Platte, and spent a week away from their offices. From that time on I began to feel rather humble about the job that I was undertaking, that one could find three very, very busy Chicago tax lawyers to come out here and take a week away from their office, and nobody got a penny for it. Ever since 1948 your bar has been kind enough to invite our committee back every year to help you, and that is why it is a genuine pleasure to be here in person today.

You probably all know Gilbert and Sullivan's Mikado, and you know about that man of many different uniforms and many different jobs called Pooh-Bah. The Pooh-Bah of Nebraska is, of course, George Turner. I have throughout the years profited from knowing him better and better, particularly because I got to know his wife, too.

Then, as time went on I came to know also the man who is now your President and who is also a member of our Committee on Continuing Legal Education, and a very helpful one. He is one of those rare individuals who is as busy as he can be but always finds time to do a little more at the drop of a hat, like going out to lecture for us at Yellowstone Park or any other part of the country that we send him.

And I have learned to know Clarence Davis very well who lectured for you here the other day; Dean Belsheim of your law school; Jimmy

Doyle of Creighton Law School who was a classmate of mine one summer at Wisconsin Law School. I had the pleasure of a few moments with him just before this meeting started.

Your Chairman introduced me as from Philadelphia. You have all heard stories about Philadelphia lawyers, but you don't get to be a Philadelphia lawyer until about the third generation, and I can't claim that distinction because I was born and reared in Wisconsin, which isn't very far away from here. Last night as we were sitting up in the suite Clarence Davis said, "Something around here smells awful."

I said, "Although I live in Philadelphia, I just cannot get the barnyard off the bottom of my shoes from Wisconsin. It's still there and always will be."

For the past several years this thing caled Public Relations has been very much in the legal air. In my work in education and in traveling around the country I have seen bar association after bar association tackle this thing, but even today I don't think I could define the term. The Philadelphia Bar Association got a medal a year ago for their fine Public Relations program, and I didn't even know what it meant. When I was asked to talk on this subject I was very reluctant and didn't have any enthusiasm about it at all. Then I noticed that in Philadelphia their Legal Aid is a big thing, that their Lawyers Reference Service is a big thing, and that they are important ingredients of a Public Relations program. Then I noticed also that the Philadelphia lawyers through the bar association are going around to the public schools of the City of Philadelphia talking about the Bill of Rights. They are also conducting students through the City Hall in Philadelphia so that they can see the law in action.

Then I recalled that back in 1950 I was down to speak at the Kentucky Bar Association, and I was introduced there by Marcus Redwine, who was then President, to the radio and television programs which were sponsored to educate the public as to why a person should have a will, what he should do in case he got involved in an automobile accident, and numerous other subjects. That was Public Relations.

And perhaps you have all seen the small brochure published only a few years ago by the Iowa Bar Association about the poll which the previous speakers have mentioned. A very surprisingly large number of the public had never consulted a lawyer, and a very large number were suspicious of lawyers.

Well, I looked over all these things and I came to the conclusion that Public Relations is *anything* that will build up public confidence in the legal profession, anything that will enable us lawyers to do a greater and more effective service for the public.

It seemed to me then that no Public Relations program could ever possibly succeed unless initially it had a sense of direction. There is

grave danger of diffusion into too many projects and in too many directions. I think it would be far better in inaugurating a program to undertake first only a limited number of specific functions, plan each one carefully and see it come to fruition. There will eventually be no end of things that you may undertake in developing a well-rounded, long-range Public Relations program.

As I began to think about these things, I became more and more enthusiastic about Public Relations, and right at this point I *am* enthusiastic about it.

What is our committee? Our committee is composed of twelve representatives of the American Law Institute, eight of the American Bar Association and the Presidents of both organizations. We were organized in 1948 as a non-profit group. We got a little money from the Carnegie Corporation to launch us and we've been going ever since then. We were given the directive, very definitely, to organize and conduct a program of continuing legal education on a national basis. And after floundering around for several months, we decided that our objectives should be:

1. To concentrate for the time being on legal institutes at a basic, practical, "how-to-do-it" level—continuing legal training for the average general practitioner.

2. That this basic training should be made available to every lawyer in the country, virtually at his doorstep, in the remote and rural as well as in the metropolitan centers.

3. That the programs should always be at the "grass-roots" level; that its sponsors should be the state and local bar associations, with our Committee functioning only as a cooperating agency.

4. That as a necessary adjunct to the basic institutes the Committee should publish practical, "how-to-do-it" handbooks on a variety of everyday subjects of the law, practical guides for the general practitioner.

The Committee is now in its sixth year. We have participated in more than three hundred basic level, "how-to-do-it" institutes in forty-three states with an aggregate attendance in excess of thirty thousand. I say that the Committee has "participated," because it has never sponsored a course. Your own course here was yours the other day, not ours.

In that time we have also published twenty-one or twenty-two basic handbooks, practical in nature. You all have in your hands these circulars. They are unique in their "how-to-do-it" approach. They are homely and down-to-earth. And look at the subjects. They are ordinary subjects, "Legal Problems in Tax Returns," and, if I were less modest I wouldn't say, but there is "The Drafting of Partnership Agreements" which I wrote myself, in which the form of a partnership agreement is a partnership agreement for the partners and not for the lawyers;

"Basic Accounting For Lawyers" and "Organizational Problems of Small Businesses." They are earthy subjects, and they have been universally praised. And we are amateurs. We are non-profit. Their practical nature has been the reason for their success, and more than 81,000 copies are now in use by the lawyers of this country. Our sales average about 2,000 books per month.

That is one part of the program. But what about the Institutes? How do they come about? I am going to bring you pretty close to home on that.

The Polk County Bar Association, where Des Moines is, decided that they wanted to give an institute, and they consulted with us. We eventually evolved the subject of Organizational Problems of Small Businesses, which you had here a year ago. They found that attractive. What does our committee do? Well, we provide the following:

1. Subject to the approval of the local sponsor, we select the speakers from our panel of lecturers which now numbers about one thousand lawyers throughout the country, each one an expert in his own field. These lecturers may be local men in Des Moines or outsiders, or a combination.

2. We prepare the circulars for them to send around to the bar and we prepared newspaper releases for them.

3. Then we send our book.

4. We also supply mimeographed lecture outlines for the audience.

At that point we stop and it is in the local hands from there on in to administer the program.

Financing is a very uncomplicated process. Among the forty-three states where we operate generally a small registration fee is charged, and the proceeds are used to pay for the books, the out-of-pocket expenses of the lecturers, for traveling, for mimeographed lecture outlines, the cost of the circulars and mailing, and then we'll usually come out with a $50.00 or $100.00 profit which we split with the local sponsor and recommend to the local sponsor that they put it in a special fund, because some day there might be a snowstorm when they give a program and nobody would show up; or to use the profits toward the construction and maintenance of a long-range program.

Some bar associations, such as Nebraska, are wealthy and they don't charge a registration fee. They pay all the expenses of the speakers—and I say that they entertain them royally—and then they pay us a small fee for our services.

But whatever the basis is, so far as our Committee is concerned it is very flexible. Methods of operating are different from state to state. In North Carolina the state bar association sponsors the program, and we could take this program "Organizational Problems of Small Businesses" into eight cities in North Carolina, geographically distributed around the state, and the program is conducted there on

successive days. In Georgia they will come together for a three-day conclave in Atlanta from all over the state. In Pennsylvania we have never been successful in working with the State Bar Association, as a result of which we work with twenty-two county bar associations.

Williamsport is a city of fifty thousand with no large city near it, so Williamsport may be considered a good sized city in Pennsylvania. By tradition there on Wednesday afternoon the lawyers close their offices and play golf throughout the year. They decided that during the winter months one Wednesday out of each month they would go to school instead of playing golf. So eight times a year we give institutes in Williamsport, Pennsylvania, on Wednesday afternoon and evening.

Milford, Pennsylvania, is a community of only 1,000. There are three counties, all rural, with a total lawyer population of fifty, but they have banded together to give periodic institutes, with thirty-two attending regularly.

Now I must stop at this point and pay tribute to the lecturers who speak for us and to those who write our books. I have been accused, and very rightfully accused, of being a proselyter of human talent. I guess that's my job. Unlike college football players, though, I don't pay our lecturers. They write our books, they go all over the country to lecture, and they never get paid. It is a wonderful tribute to the public spirit of the American Bar.

I don't know whether you remember Kurt Pantzer, of Indianapolis, Indiana, who came out here and spoke a few years ago on organizing corporations. That fellow even wrote to your State Department to find out how you organize a corporation in Nebraska and then compared it with his own ideas. He went from Omaha to Grand Island and gave his program. You just had to love that guy if you saw him and knew him.

Now what has all this to do with Public Relations? When the Committee was organized, one of the most disappointing discoveries was that there was very little organized continuing training for lawyers in the country. Another was that a comparatively large segment of the profession was apathetic about it. They no longer are.

We found that the medical profession was very, very conscious of the fact that they must have constant conclaves throughout the country on a county, state, and national basis, that they have periodicals which they send constantly to the doctors so that the average general practitioner knows about the newest vitamin and the newest drug on the market; and furthermore, they have ample publicity in the newspapers about them.

That was not done in the legal profession. The public was aware of what the medical profession was doing, but they knew nothing about what the legal profession was doing.

When lawyers improve their professional abilities, they increase the services they can perform for the public, and to make this widely known is good Public Relations. As indicated in that Iowa survey, the public at large had litle knowledge of what lawyers do to improve themselves. In fact, they had almost no knowledge of the legal profession generally. Many had never consulted a lawyer and others were suspicious of lawyers.

So I say that a Public Relations program should bring to the public knowledge of the fact that lawyers are improving their professional proficiency and are continuing to educate themselves so that they may perform better services for their clients. Therefore, if there is in such a State as Nebraska a well-rounded, long-range educational program, and if this program is adequately publicized to the public generally, you will make a significant step forward in a Public Relations program.

I take the liberty of suggesting that, as good as your programs have been in Nebraska, with your meeting the day before your annual meeting and other ones throughout the state, they are not good enough yet. They should be spread throughout the State of Nebraska at periodic intervals throughout the year in small towns and large ones. They may be spearheaded by your state bar group, but they will have to be in the local community with zeal and enthusiasm and leadership from the local level in carrying out the programs.

Typically, as in Williamsport, Pennsylvania, I go up there in the summer and plan for the entire winter series of programs. We set up eight institutes in the summer. We select the subjects and the speakers and make all the preliminary arrangements well in advance. And I mentioned Milford, Pennsylvania, to you, a town of one thousand. Williamsport and Milford are no different from Grand Island or North Platte. You can do the same thing here.

Perhaps as a part of your Public Relations program you should select six or eight communities in Nebraska and make definite arrangements for three or four institues per year. When I talk about institutes I am not being highfalutin. You take that little fellow who wrote our book on "Organizational Problems of Small Businesses." He can come out and give you one talk for $150.00, and he will tell you how easy it is to operate a small partnership as a corporation with limited liability, or to operate a small corporation much as you would operate a partnership. As time goes on you could become a little more ambitious. When you do that, you may or may not choose to use the services of our Committee. That is entirely up to you. We stand always ready, able, and willing to help you.

I have now come to the enthusiastic conclusion that you can and should make continuing legal education one of the significant adjuncts to your Public Relations program.

I cannot refrain from thanking you again for the wonderful hospitality shown me here in Nebraska.

PRESIDENT WILLIAMS: Thank you, John Mulder. At this time, we will show a sound film produced by the State Bar of Texas and loaned to us for exhibition at this time to illustrate the place of motion pictures in a program of public service. It runs 18 minutes. It is designed for use before civic groups, luncheon clubs, and other groups of laymen. Through the device of a lawyer-father talking with his teen-age son, it attempts to portray something of the social and economic significance of law, lawyers and courts.

(Showing of Texas Film)

PRESIDENT WILLIAMS: For your information, the motion picture and sound projector which you see here has been purchased by this Association and is owned by it as is the screen, so you will have the mechanical means to present this and other films to local audiences. I might tell you that these films run eighteen minutes.

We are not going to show the other film right at this time, but because there is considerable doubt as to which is the better film—quite a few people seem to prefer the Michigan film—we will show it at the conclusion of this panel discussion.

Before we saw the motion picture you heard in broad panorama a discussion of this problem of Public Relations on which we have started to chew. We come now to a question and answer period, a type of symposium panel discussion. We invite questions on any part of the entire subject from any member of the audience, or, for that matter, from any member of the panel. Has any one a question?

EDMUND D. MCEACHEN (Omaha): This is a question, to Mr. Hyndman or Miss Dornon. Our local association of young lawyers here in Omaha has considered the advisability of a television series consisting of panel discussions on certain subjects which would be interesting to the ordinary layman. The panel members would be members of our local organization, probably changing each week. What is your experience as to the advisability of that kind of program?

PRESIDENT WILLIAMS: Don, do you want to start on that?

DON HYNDMAN: I might say that a number of bar associations around the country have had that type of program. I am not personally familiar with their success, but all the indications are that they have been successful.

Incidentally, there is a section of the Manual devoted to television in which some of those programs are described. You might well want to write to some of the bar associations that have had those programs to get their experience on them.

PRESIDENT WILLIAMS: Miss Dornon, do you want to supplement Mr. Hyndman's remarks?

KATHLEEN DORNON: I think such a program would be effective. There is just one thing that you probably should remember, and that is to be sure to change your panel every week so that the same lawyers will not appear more than once. You will avoid criticism in that way.

MR. MCEACHEN: I would like to ask one more question. We had heard that television is a particularly difficult medium for amateurs and that we might do more harm than good by putting people on the panel who might make a poor appearance, although we might not anticipate a poor appearance until it was made. I wonder if you have any ideas on that.

MR. HYNDMAN: Maybe you could rehearse it in advance. I think there is real danger in what you say. Unlike any other medium, even unlike radio, presentation and preparation are doubly important in the case of TV. That is why I say that you might get some good pointers by communicating directly with some of these other associations that have experimented with it.

RICHARD P. TINKHAM: I might add a word there.

PRESIDENT WILLIAMS: If you will, Mr. Tinkham.

MR. TINKHAM: I have seen a number of these shows and have been on a couple of them. The Indiana State Bar Association had one during the session of the legislature in which proponents and opponents of various measures which were going to be introduced, generally lawyers, appeared on the program. It was highly successful and resulted in a large amount of fan mail and telephone calls immediately after the program.

The Dade County Bar Association at Miami Beach, Florida, has had such a program as you suggest for many years. It is highly successful there. It is informal. I don't think they even rehearse for that there.

MR. HYNDMAN: I don't think they do either, but if you are concerned about it, that might be one way to do it. You could have a system of try-outs in which you could eliminate any who obviously were unqualified.

PRESIDENT WILLIAMS: As I recall, I may be responsible for the suggestion that there was danger in the use of that medium. I carried home from that conference we had in Chicago last February, Miss Dornon and Don, the impression that some one there had said that the very finest lawyer, of the finest character, with complete integrity, if utterly unphotogenic—if he looked like the type of person on television that those who produce plays on television choose to cast in the role of gangsters, etc.—could sometimes create a bad impression.

Since I started this thing by saying that, simply trying to repeat what I had heard, perhaps you better explore it from that angle, and perhaps that might give Mr. McEachen a more direct answer to what

I think is bothering him. I'll ask it this way, How wrong was I in what I said I had heard said? Miss Dornon.

MISS DORNON: Well, television, of course, is a new medium and no one knows too much about it. I might tell you what a TV man told me about the show that has Dorothy Killgallon on it. They say that men despise Dorothy Killgallon and they get letters by the carloads, but they keep her on the program because while they despise her they also are fascinated to listen to her. I think probably the information and the over-all impression would outweigh any disadvantages to it.

PRESIDENT WILLIAMS: Other questions?

MR. MURPHY: Miss Dornon, these pamphlets that were mentioned, will they be giving legal advice? If so, wouldn't they be a form of competition to the lawyer, and particularly to the young lawyer?

MISS DORNON: We have been very careful about that, we who have written the pamphlets. In the first place, we never answer a specific question. It is a broad general situation that points out to people the type of information, the type of service that a lawyer gives. Of course, the answer that you have to give where you start talking about buying a home eventually turns out to be, "You have to see your lawyer on this." You can't avoid putting that in your pamphlet.

Actually, it can do nothing but good for the young lawyer because it indicates to the public the type of services they need from a lawyer. We have had a number of people come into our Lawyer Reference Bureau with pamphlet in hand who had never considered consulting a lawyer before either on wills or on buying a home. If some are coming to Lawyer Reference, a lot of them are picking out their own attorneys for that purpose.

PRESIDENT WILLIAMS: May I ask the other members of the panel, when I direct a question to one, please supplement, comment, etc.

Other questions?

PAUL H. BEK (Seward): President Larry, I wonder if something could be told us about the cost of television shows and films.

MR. HYNDMAN: I know not too much, but a little about that. This chap who addressed the Ann Arbor conference that I mentioned said that the average TV station gets somewhere between $1,000 and $2,000 per half hour. However, as in the case of radio stations, the TV stations must provide a proportion of their time to public service type programs, and that is where bar associations can get in their good licks without cost. There is no fixed proportion of time that they must devote to public service type programs. It is not a definite percentage, but they have to make reports to the F.C.C., and they do that to demonstrate that they are operating in the public convenience and necessity, and of course the better record they have on that, the stronger their position.

MR. TINKHAM: I might add a word to that. None of these bar programs are buying time at the present time; they are all given the time by the stations as a public service. So they are all for-free as far as the bar associations are concerned.

MR. HYNDMAN: One further point on that. What Dick says is true. In addition, there are some professionally produced programs sponsored by financial institutions in various communities that are indirectly beneficial to the legal profession. In fact, they contain some commercial references to seeing your lawyer for specific services. There are a number of those programs. In Chicago we have a very outstanding one by a Title and Trust Company. It is a weekly half-hour or hour concert by the Chicago Symphony Orchestra that is televised. It is an outstanding program. There is a brief commercial in which a certain official of the bank answers questions of a legal character, but he always winds up by advising people that when they are confronted with problems of that kind they should see the attorney of their choice. It's very effective.

PRESIDENT WILLIAMS: Further questions?

WALTER G. HUBER (Blair): Mr. Chairman, I wonder if the panel would enlarge on the proposition of getting the public to see their attorney as more or less their famliy lawyer for personal handling or for reference to some one specified, somewhat as the doctors are attempting to do at the preseint time, "See your doctor and he'll take care of you, or go from there."

MR. TINKHAM: The only effort I know of along that line is one by the Chemical National Bank of New York. It ran a series of advertisements in the *Forbes* Magazine about a year ago in which the message was, "See Your Lawyer As You Would Your Doctor." That gained quite favorable attention among those who read *Forbes* Magazine. It has a very limited circulation.

There hasn't been much done on that, so far as I know.

PRESIDENT WILLIAMS: I am sure Miss Dornon can add something else that has been done—your pamphlets on "Property Is A Family Affair" and "Lawyer Counsel With Husband and Wife," with the Minnesota State Bar.

MISS DORNON: Well, the whole series of pamphlets in Minnesota, taken over-all, were designed for that purpose in part. If they asked for all of them, and most people did, before they were through with the thirteen pamphlets they had a pretty general idea that they needed a family lawyer as well as a family doctor.

PRESIDENT WILLIAMS: Does anybody want to ask about newspaper columns as distinguished from press releases which we have talked a good deal about. Would some one on the panel want to comment about the use of those? I think they are of great interest to lawyers outside of Omaha and Lincoln.

MISS DORNON: In Minnesota we did try a column in the newspapers. The original columns were taken from the material contained in the pamphlets, but I rewrote them with a news lead, "The Minnesota Bar Association today pointed out thus-and-so." They were picked up and used originally by about 250 papers in the state. Those were the weekly and small daily papers. It was a harder job to get it into the bigger papers, although the Duluth newspapers used it as a Sunday feature, after a while, and the St. Paul Pioneer Press used it on its editorial page. We never did talk the Minneapolis Star Tribune into using it, although they did indicate that they would if we would rewrite it so it would look like a special feature of theirs, but we didn't have time to do it.

PRESIDENT WILLIAMS: You also had a special mat prepared for it.

MISS DORNON: Oh yes. We had a little head prepared that showed the bar symbol up there. That was to be the Statue of Liberty with a seal superimposed, and a title, "It's the Law" made up. We had mats made from the cut, and we sent the mats to all the newspapers in the state along with the first two or three columns through the Minnesota Editorial Association. Most of the papers used this little heading over the column. Then they would write a little headline underneath, with the material following. We also used those columns when we wrote about wills or property or some such thing, to help increase the distribution of the pamphlets we mentioned that if further information was wanted they could write in for the pamphlets.

MR. TINKHAM: I might add a word of caution there. There is a controversy on right at the present time concerning a column in Louisiana —the Times Picayune, isn't it?

MR. HYNDMAN: No, it's one of the smaller papers in Louisiana.

MR. TINKHAM: One of the papers in New Orleans through the bar association established a column for subscribers to write in and secure answers to legal problems; general answers, that is, no specific advice. That has been ruled by the Professional Ethics and Grievance Committee of the A.B.A. to be unethical, and that has been stopped. The newspapers prefer that type of column because they feel it has more interest to their readers .

PRESIDENT WILLIAMS: I know Mr. Fitzgerald has a question.

JAMES J. FITZGERALD (Omaha): I don't know that it is a question. It is on the subject of newspaper articles. We already have here an arrangement with the Omaha World Herald to run a series of twenty articles for free. They have imposed this condition, however, that all of the articles have to be ready before they will run the first one. Also, they must be non-professional, non-technical in language. They have approved the list of twenty publications, so we are ready to go on that and it won't cost anything, but we need twenty lawyers to write these articles. Then those articles have to go to the Public

Service Director. Then the newspaper man has to rewrite them so that they will be attractive and readily digestible by the public. Then that article has to go back from the Director to the lawyer who wrote it for professional checking as to accuracy. I just thought I would throw that out on the table here.

PRESIDENT WILLIAMS: Yes, thank you, Jim. We have explained that to the young gentleman who has been flitting around this hotel at ninety miles an hour for the last four or five days, and who right now is apparently busily engaged in the performance of his professional duty.

I wonder, Mr. Derry, if I could interrupt your conversation with the reporters long enough to ask you to come up here and take a bow? Mr. Donald G. Derry, who has been hired by our Executive Council as the Public Service Director of the Nebraska State Bar Association, is a young man of whom we have grown terrifically fond since he started work for us on November 1. He spent several days in Minnesota learning about their program, several days in Chicago with Miss Dornon, Mr. Hyndman, and the other American Bar people. He attended the Institute to which Mr. Hyndman referred at Michigan. He is learning a lot about lawyers and bar associations very fast.

I am very proud to present to you, not for a speech but just so you can have a good look at him, Mr. Donald G. Derry!

Now I give you a choice, ladies and gentlemen. We can do one of two things, not both. We can continue the panel discussion, or you can see the Michigan film. Those who wish to continue the panel discussion, raise your hand. We apparently are going to see the film.

PRESIDENT WILLIAMS: The film which you are about to see was prepared by the State Bar of Michigan and illustrates the activities of a lawyer in many fields. He is shown advising his clients, appearing before legislative committees, conferring in a labor dispute, defending a person charged with crime and finally, presenting a case on appeal before the highest court of his state. A print of this film has been purchased by your association and is available for showing to interested groups within your locality, to high schools, to sessions of Boys and Girls County Government. Your request for the use of the film should be sent to the secretary. If needed, we will send an operator and projection equipment to your town.

(Showing of the Michigan film)

PRESIDENT WILLIAMS: The very capable operator of our motion and sound picture projector equipment—I don't know whether or not he has a union card—is George Turner's son.

I would like to ask you, for the guidance of the Council, how many of your preferred the Michigan film, the one that was shown last; how many preferred the film that was shown first? Apparently evenly divided, if I am any judge of the number of hands.

I want at this time to express our very deep appreciation to the members of the very able panel who have presented this afternoon's program. To each of you, our very sincerest thanks for your very generous donation of your time and effort to our program. We are forever in your debt for your fine service to us.

We come now to the matter of unfinished business. I presume there is to be some because I earlier ruled one item out of order. Mr. Cassem, do you have something you want to present?

EDWIN CASSEM (Omaha): Yes sir, Mr. President. I don't think this convention should adjourn without endorsing the Jenkins-Keough bill, pressing it upon the attention of all Nebraska members in the House of Representatives and the Senate of the Congress of the United States and urging them to bestir themselves to get it enacted.

PRESIDENT WILLIAMS: Would you care to tell us briefly what it is?

MR. CASSEM: It is a bill now pending in Congress which gives the professional man, the lawyer and others, a chance to accumulate a retirement fund, so to speak, by income tax deductions. I think the bill as written permits ten per cent of the income to be invested in a retirement fund up to a certain limit—I think it is about $7,500 of net taxable income—tax free, so that the professional man gets the same break as the president of a corporation whose corporation has a retirement fund. The corporate officer after a few years retires, and his salary hasn't been taxed to build up that fund; whereas the professional man who has no tax exempt income, if he were to build up something like that would have to pay something like sixty per cent of it to the government before he could put any of it in such a fund.

I think it is something that the bar associations should press very hard upon the Congress.

PRESIDENT WILLIAMS: So far, I believe, we have had simply an expression of opinion.

MR. CASSEM: Do you want me to make a motion?

PRESIDENT WILLIAMS: I don't WANT you to. I am just calling your attention to the fact that so far we don't have anything to act on. I also will say this, that this is correctly a subject for resolution and I probably should have ruled it out of order, then you should get the assembly to overrule me, and then we could go to work on it. I won't rule it out of order.

MR. CASSEM: Perhaps I should make the following motion: I move that the President appoint a committee to prepare a resolution and to circularize the members of the Congress and congressional committees before whom this bill is pending, urging the adoption of it.

PRESIDENT WILLIAMS: May I make a suggestion by way of procedure? First of all, that you present this in the form not of that specific bill alone but something of like purpose and effect, for the reason that there are fifteen or twenty different proposals pending

before Congress all aimed at the same type of relief. The new Revenue Revision Act which is now under consideration, I happen to know, may contain something along that line but not what is embodied in that specific bill. So may we interpret your motion to be one of approval of a bill of like purpose and effect?

MR. CASSEM: You may, and I so amend my motion.

PRESIDENT WILLIAMS: Is there a second?

MR. BRUBAKER (Nelson): I second the motion.

PRESIDENT WILLIAMS: Is there any discussion?

JAMES G. MOTHERSEAD (Scottsbluff): I had hoped we would get through this magnificent session without having, as we have in other closing sessions, a very important matter presented out of a clear sky not to the State Bar of Nebraska, but to just a bunch of us old goats who are too lazy to get up and hunt and drink and stand around.

From what little I know, I think we do favor the gentleman's motion, but I don't know enough about it to vote on it intelligently. Very obviously it isn't going to be an expression of what the State Bar thinks.

I can see the need for some action, so I make this amendment: That the Executive Council be authorized to make a study of this matter and, if they approve, on behalf of the Association speak for the Association in such matter.

PRESIDENT WILLIAMS: Mr. Cassem, would you accept that amendment?

MR. CASSEM: No. May I comment? I think it is important that the members of the Congress be advised that a resolution was passed by this State Bar Association in convention urging this thing.

There is no mystery about it, Mr. Mothersead. Most of us, I think, know that everybody else is getting this tax break, but the professional man, the lawyer included, is not getting it. He has to pay income taxes on everything he makes before any of it is put into any kind of a retirement fund.

I don't think it is anything that we ought to send on to the Executive Council and have them be toying with it. I think it is all right to submit it to them for their veto in case they don't want to do it, but I think this body assembled here should pass a resolution.

PRESIDENT WILLIAMS: Very well. Is there a second to the amendment?

KEITH MILLER (Omaha): I will second it.

PRESIDENT WILLIAMS: Is there any discussion of the amendment? The vote is on the amendment. All those in favor signify by saying "aye"; those opposed, same sign. I rule that the first "ayes" have it and the motion is carried. The vote is now on the motion as amended. Is there any discussion of that before I put the question? All those

who favor the motion as amended say "aye"; all those opposed. It is unanimously carried.

I passed the scheduled report of the Executive Council on resolutions because no resolutions were submitted and there is, therefore, no report.

We come now to something which is a source of very great personal pleasure to me. May I call to the podium the newly elected officers and present them to you.

Mr. Leon Samuelson, Vice President—he was here a moment ago. He may have had to leave.

Mr. Oscar Doerr of Omaha, will you come to the stand.

Mr. Elmer Scheele of Lincoln, our other newly elected Vice-President, is he in the room? Apparently not.

At any rate, ladies and gentlemen, on my left is one of our new Vice-Presidents, Mr. Oscar Doerr of Omaha.

Now, Mr. Cronin, will you come here. Julius, it is with a great deal of pride and my very fondest wishes for a great year, that I present to you this badge of office. You will notice that we are trying to start a new tradition. This gavel which I now hand you is inscribed with your name and the year and is the badge of your office. May you possess it proudly ever. I can assure you that no greater honor has ever come to me than that of being President of this Association. I hope that greater may come to you, but I will express doubt that it could. I wish you every success. The affairs of this Association couldn't be in finer hands than they are going to be next year. God bless you!

...The audience arose and applauded...

SECRETARY TURNER: In keeping with the fine tradition which Mr. Williams has just inaugurated of presenting a gavel to the incoming president, I take a great deal of pleasure in presenting this gavel to the outgoing President. (Applause)

PRESIDENT-ELECT JULIUS D. CRONIN (O'Neill): I would like to say to Mr. Williams and to you that I am under a heavy obligation of gratitude to him for suggestions and help since my designation by the Executive Committee. I hope that I can in some measure merit the many fine things that he has said here.

We come now to the end of this year's Association business. It has been a historic year for the Association. Under Larry's leadership and guidance, and because of his driving force and his energies, we have accomplished a good many things and started a good many new programs. The dues have been increased so that the Association has some funds with which to function and with which to perform the many things that you are entitled to have done for you. He has inaugurated this program of Public Service, and he and the Executive Committee, after much investigation, much work, much consideration,

have employed the fine young man who was introduced a while ago to guide that program for us in the coming years.

In addition, the Association has adopted a new form of government, a more democratic form, which I assume will be inaugurated and installed soon.

We have also continued to carry out the practice that has been in effect in Nebraska for the past four years of continuing legal education.

I know I speak for every member of the Nebraska Bar when I say to you, Larry, that we are everlastingly and eternally grateful to you for your work on behalf of the Association and in our behalf. I don't suppose any one could estimate in money the value of the hours and days and weeks that he has expended on behalf of the Association.

Now, in the year to come I am, I hope, somewhat conscious of my limitations. I shall devote all of the necessary time and my best ability in cooperation with your Secretary and your Executive Council, to carry out the program that has been inaugurated by my predecessor. And I hope that a year from today when I turn over to my successor the badge of office, I shall have merited at least a part of the respect and gratitude of our membership that I know Larry has earned.

...The audience rose and applauded...

PRESIDENT WILLIAMS: The fifty-fourth annual meeting of the Nebraska State Bar Association is adjourned.

...The convention adjourned at four-fifty o'clock...

NEBRASKA STATE BAR ASSOCIATION
STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS
OCTOBER 1, 1952 TO OCTOBER 31, 1953

Receipts:		
Active Members Dues:		
1954	$10,420.00	
1953	20,290.00	
1952	10.00	$30,720.00
Inactive Members Dues:		
1954	260.00	
1953	1,602.00	
1952	32.00	
1951	22.00	
1950	20.00	
1949	18.00	
1948	14.00	
1947	6.00	
1946	6.00	
1945	6.00	
1944	5.00	
1943	5.00	
1942	5.00	
1941	5.00	
1940	5.00	
1939	5.00	
1938	5.00	$ 2,021.00
Over-payment of Dues	89.00	
Less: Refunds	89.00	
Received on Supplements, Etc.	22.90	
Less: Payments to Nebraska State Library	22.90	
Reimbursement for Disbarment Expense:		
Weibusch	815.87	
McGan	186.20	1,002.07
Certificate to Court	1.00	
Less: Reimbursement	1.00	
TOTAL RECEIPTS		$33,743.07

Disbursements:

Salaries and Payroll Taxes		$ 5,459.50
Office Supplies, Printing, Stationery and Postage		2,872.74
Nebraska Law Review		1,764.02
Printing, Binding & Reporting Proceedings of Annual Convention		2,724.13
Directory		904.75
Printing, Binding & Reporting Proceedings as Executive Council Expense		506.82
Aid to Local Bars		98.37
Officers Expense		1,938.17
American Bar Association Meetings	$1,453.03	
Less: Refund of Expense Advances	93.74	1,359.29
Advisory Committee		35.97
Nebraska State Bar Journal	$ 899.09	
Less: Advertising	273.00	626.09
Judicial Council		68.75
Institute on New Legislation		552.70
Institute on Organizational Problems of Small Businesses		442.85
Federal Tax Institute	$1,459.61	
Less: Refunds of Expense Advances	72.48	1,387.13
Committee on Judiciary		132.48
Committee on Crime and Delinquency Prevention		274.38
Committee on Public Relations		175.52
Committee on Legal Education		33.20
Committee on Unauthorized Practice of Law		60.35
Committee on Budget and Finance		35.00
Committee on Cooperation with American Law Institute		231.02
Committee on Judicial Selection		18.75
Committee on Legislation		8.85
Committee on Conference of Lawyers and Accountants		52.90
Committee on By-Laws		12.20
Junior Bar Section	$ 657.29	
Less: Refund of Expense	306.00	351.29
Annual Meeting	$4,402.38	
Less: Receipts and Expenses Reimbursed	1,713.54	2,688.84
Conference Bar Association Presidents		25.00
Roscoe Pound Lectureship	$1,135.45	
Less: Refund	675.59	459.86
National Council Uniform State Laws		450.00
Telephone and Telegraph		122.49
Refund Dues		20.00
Bond Premium		25.00
Audit		135.00

Inquiry and Complaint	342.18
Miscellaneous	5.10
Total Expense	$26,400.69
Excess of Receipts Over Disbursements	7,342.38
Cash Balance, October 1, 1952	2,563.51
Excess of Receipts Over Disbursements	7,342.38
Cash Balance, October 31, 1953	$ 9,905.89

ROLL OF PRESIDENTS

1.	1900	*Eleazer Wakely	Omaha
2.	1901	*William D. McHugh	Omaha
3.	1902	*Samuel P. Davidson	Tecumseh
4.	1903	*John L. Webster	Omaha
5.	1904	*C. B. Letton	Fairbury
6.	1905	*Ralph W. Breckenridge	Omaha
7.	1906	*E. C. Calkins	Kearney
8.	1907	*T. J. Mahoney	Omaha
9.	1908	*C. C. Flansburg	Lincoln
10.	1908	*Francis A. Brogan	Omaha
11.	1910	*Charles G. Ryan	Grand Island
12.	1911	*Benjamin F. Good	Lincoln
13.	1912	*William A. Redick	Omaha
14.	1913	*John J. Halligan	North Platte
15.	1914	*H. H. Wilson	Lincoln
16.	1915	*C. J. Smyth	Omaha
17.	1916	*John N. Dryden	Kearney
18.	1917	*F. M. Hall	Lincoln
19.	1918	*Arthur C. Wakely	Omaha
20.	1919	*R. E. Evans	Dakota City
21.	1920	*W. M. Morning	Lincoln
22.	1921	*A. G. Ellick	Omaha
23.	1922	*George F. Corcoran	York
24.	1923	*Edward P. Holmes	Lincoln
25.	1924	*Fred A. Wright	Omaha
26.	1925	*Paul Jessen	Nebraska City
27.	1926	*E. E. Good	Wahoo
28.	1927	*F. S. Berry	Wayne
29.	1928	Robert W. Devoe	Lincoln
30.	1929	Anan Raymond	Omaha
31.	1930	*J. L. Cleary	Grand Island
32.	1931	*Fred Shepherd	Lincoln
33.	1932	*Ben S. Baker	Omaha
34.	1933	*J. J. Thomas	Seward
35.	1934	*John J. Ledwith	Lincoln
36.	1935	*L. B. Day	Omaha
37.	1936	J. G. Mothersead	Scottsbluff
38.	1937	C. J. Campbell	Lincoln
39.	1938	Harvey M. Johnsen	Omaha
40.	1939	James M. Lanigan	Greeley
41.	1940	E. B. Chappell	Lincoln
42.	1941	Raymond G. Young	Omaha
43.	1943	Paul E. Boslaugh	Hastings
44.	1943	Robert R. Moodie	West Point
45.	1944	George L. DeLacy	Omaha
46.	1945	Virgil Falloon	Falls City
47.	1946	Paul F. Good	Lincoln
48.	1947	Joseph T. Votava	Omaha
49.	1948	Robert H. Beatty	North Platte
50.	1949	Abel V. Shotwell	Omaha
51.	1950	Earl J. Moyer	Madison
52.	1951	Clarence A. Davis	Lincoln
53.	1952	George B. Hastings	Grant
54.	1953	Laurens Williams	Omaha

ROLL OF SECRETARIES

1.	1900-06	Roscoe Pound	Lincoln
2.	1907-08	Geo. P. Costigan, Jr.	Lincoln
3.	1909-	W. G. Hastings	Lincoln
4.	1910-19	A. G. Ellick	Omaha
5.	1920-27	Anan Raymond	Omaha
6.	1928-36	Harvey Johnsen	Omaha
7.	1937-	George H. Turner	Omaha

ROLL OF TREASURERS

1.	1900-	Samuel F. Davidson	Tecumseh
2.	1901-	S. L. Geisthardt	Lincoln
3.	1902-03	Charles A. Goss	Omaha
4.	1904-05	Roscoe Pound	Lincoln
5.	1906-13	A. G. Ellick	Omaha
6.	1914-16	Chas. G. McDonald	Omaha
7.	1917-22	Raymond M. Crossman	Omaha
8.	1923-37	Virgil J. Haggard	Omaha
9.	1938-	George H. Turner	Lincoln

ROLL OF EXECUTIVE COUNCIL

1.	1900-04	R. W. Breckenridge	Omaha
2.	1900-08	Andrew J. Sawyer	Lincoln
3.	1900-02	Edmund H. Hinshaw	Fairbury
4.	1903-06	W. H. Kelligar	Auburn
5.	1904-07	John N. Dryden	Kearney
6.	1905-08	F. A. Brogan	Omaha
7.	1907-10	S. P. Davidson	Tecumseh
8.	1908-09	W. T. Wilcox	North Platte
9.	1909-11	R. W. Breckenridge	Omaha
10.	1910-12	Frank H. Woods	Lincoln
11.	1910-10	Charles G. Ryan	Grand Island
12.	1910-19	Alfred G. Ellick	Omaha
13.	1911-13	John A. Ehrhardt	Stanton
14.	1911-11	Benjamin F. Good	Lincoln
15.	1912-15	C. J. Smyth	Omaha
16.	1912-12	William A. Redick	Omaha
17.	1913-15	W. M. Morning	Lincoln
18.	1913-16	J. J. Halligan	North Platte
19.	1914-14	H. H. Wilson	Lincoln
20.	1915-17	Edwin E. Squires	Broken Bow
21.	1916-16	John N. Dryden	Kearney
22.	1916-17	Frederick Shepherd	Lincoln
23.	1917-17	Frank M. Hall	Lincoln
24.	1917-18	Anan Raymond	Omaha
25.	1918-18	A. C. Wakeley	Omaha
26.	1918-22	Fred A. Wright	Omaha
27.	1919-19	R. E. Evans	Dakota City
28.	1919-22	Geo. F. Corcoran	York
29.	1919-20	L. A. Flansburg	Lincoln
30.	1920-20	W. M. Morning	Lincoln
31.	1920-27	Anan Raymond	Omaha
32.	1921-21	Alfred G. Ellick	Omaha
33.	1921-23	Guy C. Chambers	Lincoln
34.	1922-24	James R. Rodman	Kimball
35.	1923-26	E. E. Good	Wahoo
36.	1924-26	Robert W. Devoe	Lincoln
37.	1924-24	Fred A. Wright	Omaha
38.	1925-28	Paul Jessen	Nebraska City
39.	1925-27	Clinton Brome	Omaha
40.	1927-29	Charles E. Matson	Lincoln
41.	1927-28	Fred S. Berry	Wayne
42.	1928-29	Robert W. Devoe	Lincoln
43.	1928-30	T. J. McGuire	Omaha
44.	1928-34	Harvey Johnsen	Omaha
45.	1929-31	E. A. Coufal	David City
46.	1929-29	Anan Raymond	Omaha
47.	1930-32	Paul E. Boslaugh	Hastings
48.	1930-30	J. L. Cleary	Grand Island

* Deceased

49.	1931-33	W. C. Dorsey	Omaha
50.	1931-31	Fred Shepherd	Lincoln
51.	1932-34	Richard Stout	Lincoln
52.	1931-32	Ben S. Baker	Omaha
53.	1933-35	Barlow F. Nye	Kearney
54.	1933-33	J. J. Thomas	Seward
55.	1934-36	Chas. F. McLaughlin	Omaha
56.	1934-34	John J. Ledwith	Lincoln
57.	1935-35	L. B. Day	Omaha
58.	1935-37	James M. Lanigan	Greeley
59.	1935-38	H. J. Requartte	Lincoln
60.	1935-38	Raymond M. Crossman	Omaha
61.	1935-40	F. H. Pollock	Stanton
62.	1935-41	T. J. Keenan	Geneva
63.	1935-39	Walter D. James	McCook
64.	1935-37	Roland V. Rodman	Kimball
65.	1936-36	J. G. Mothersead	Scottsbluff
66.	1936-38	James L. Brown	Lincoln
67.	1937-39	David A. Fitch	Omaha
68.	1937-39	Raymond G. Young	Omaha
69.	1937-41	M. M. Maupin	North Platte
70.	1937-41	Golden P. Kratz	Sidney
71.	1938-42	Sterling F. Mutz	Lincoln
72.	1938-42	Don W. Stewart	Lincoln
73.	1940-46	George N. Mecham	Omaha
74.	1940-42	Abel V. Shotwell	Omaha
75.	1940-42	Frank M. Colfer	McCook
76.	1941-43	Virgil Falloon	Falls City
77.	1941-43	Joseph C. Tye	Kearney
78.	1941-47	Earl J. Moyer	Madison
79.	1937-37	C. J. Campbell	Lincoln
80.	1938-38	Harvey Johnson	Omaha
81.	1939-39	James M. Lanigan	Greeley
82.	1940-40	E. B. Chappell	Lincoln
83.	1942-45	Fred J. Cassidy	Lincoln
84.	1941-41	Raymond G. Young	Omaha
85.	1942-48	Max G. Towle	Lincoln
86.	1942-42	Paul E. Boslaugh	Hastings
87.	1942-45	John E. Dougherty	York
88.	1942-49	Yale C. Holland	Omaha
89.	1943-45	Robert R. Moodie	West Point
90.	1941-45	B. F. Butler	Cambridge
91.	1943-46	Frank M. Johnson	Lexington
92.	1944-49	Floyd E. Wright	Scottsbluff
93.	1945-50	John J. Wilson	Lincoln
94.	1945-48	Robert B. Waring	Geneva
95.	1944-46	George L. DeLacy	Omaha
96.	1945-47	Virgil Falloon	Falls City
97.	1945-49	Leon Samuelson	Franklin
98.	1946-48	Harry W. Shackelford	Omaha
99.	1946-48	Paul F. Good	Lincoln
100.	1947-48	Joseph T. Votava	Omaha
101.	1947-49	John E. Dougherty	York
102.	1947-	Lyle E. Jackson	Neligh
103.	1948-49	Robert H. Beatty	North Platte
104.	1947-50	Frank D. Williams	Lincoln
105.	1947-50	Thomas J. Keenan	Geneva
106.	1948-51	Laurens Williams	Omaha
107.	1949-51	Joseph H. McGroarty	Omaha
108.	1949-	Wilber S. Aten	Holdrege
109.	1948-50	Abel V. Shotwell	Omaha
110.	1949-	Paul L. Martin	Sidney
111.	1949-	Joseph C. Tye	Kearney
112.	1949-51	Earl J. Moyer	Madison
113.	1950	Harry A. Spencer	Lincoln
114.	1950-	Paul P. Chaney	Falls City
115.	1950-	Paul Bek	Seward
116.	1950-52	Clarence A. Davis	Lincoln
117.	1951-	Barton H. Kuhns	Omaha
118.	1952-	Thomas C. Quinlan	Omaha
119.	1951-52	George B. Hastings	Grant
120.	1952-	Laurens Williams	Omaha